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ANALYSIS OF THE ADMINISTRATION OF PROCUREMENT PRACTICES IN THE SOUTH AFRICAN PUBLIC SECTOR

By

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DEDICATION

I would like to dedicate this work to my late parents who tirelessly ensured that I would achieve the level of education, which has opened my eyes, and mind to date.

Mother Languta and father Magezi, I salute you. Without you, I would have been nothing in this world; I would have been a lonely, shaking reed inside the deep waters.

My late brother Ntiyiso may your soul rest in peace! I love you, brother!

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In life, you can't go back. When it's too late, it's too late. We never know what tomorrow will bring, or even today. I've lost loved ones and I've seen others lose some of the closest people to them, unexpectedly, without warning. Did they have regrets about not telling them they cared enough? Failing to say those three simple words as often as they should? I don't ever, ever want to find myself in that position. Cherish the people around you today. Let them know they're important to you. Let them know you love them. Say it today, as if you mean it, and say it often. No one gets tired of being reminded that you love them, or hearing that you care. Yes, show it, but also say it. You never know when someone needs to hear those three simple words most. Love comes from God. Wisdom and knowledge also come from God.

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“All men can see these tactics whereby I conquer, but what none can see is the strategy out of which victory is evolved.” – Sun Tzu

DECLARATION OF ORIGINALITY

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LIST OF ABBREVIATIONS

AA	Accounting Authority
AFU	Assets Forfeiture Unit
AGSA	Auditor-General of South Africa
AO	Accounting Officer
AFLRA	Association of Finnish Local and Regional Authorities
BBBEEA	Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003)
BEE	Black Economic Empowerment
BL	Bidding Law (China)
BWB	Anti-Rust Law (Germany)
CIDBA	Construction Industry Development Board Act, 2000 (Act 38 of 2000)
CoGTA	Department of Cooperative Governance and Traditional Affairs
CIPS	Chartered Institute of Purchasing & Supply
COA	Competition Act, 1998 (Act 89 of 1998)
CWP	Community Works Programme
DCoG	Department of Cooperative Governance
DPSA	Department of Public Service and Administration
DTA	Department of Traditional Affairs
dti	Department of Trade and Industry
DWS	Department of Water and Sanitation
EU	European Union
EBRD	European Bank for Reconstruction and Development
FPP	Finland Public Procurement
GAO	Government Administration Office
GDP	Gross Domestic Product
GPA	Government Procurement Agreement
GPL	Government Procurement Law
GWB	Gesetz gegen Wettbewerbsbeschränkungen (Federal Anti-Trust Law)
HDI	Historically Disadvantaged Individuals
IEC	Independent Electoral Commission
IoDSA	Institute of Directors of Southern Africa
ITB	Ingonyama Trust Board
ITECHLAW	International Technology Law Association

ILC	International Labour Conference
ILO	International Labour Organisation
INTOSAI	International Organization of Supreme Audit Institutions
IRMSA	Institute of Risk Management of South Africa
LVG LSA	Landesvergabegesetz [Sachsen-Anhalt] (Procurement Law of Saxony-Anhalt)
MEE	Ministry of Employment and the Economy
MFMA	Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003)
MSA	Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)
MOF	Ministry of Finance
NACH	National Anti-Corruption Hotline
NDRC	National Development and Reform Committee
NDHS	National Department of Human Settlements
NPA	National Prosecution Authority
NPM	New Public Management
NRF	National Research Foundation
OCPO	Office of the Chief Procurement Officer
OECD	Organisation of Economic Cooperation and Development
OJ/OJEU	Official Journal of the European Union
PAIA	Promotion of Access to Information Act, 2000 (Act 2 of 2000)
PAJA	Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)
PAMA	Public Administration Management Act, 2014 (Act 11 of 2014).
PCCAA	Prevention of Combating of Corrupt Activities Act, 2004 (Act 12 of 2004)
PDA	Protected Disclosures Act, 2000 (Act 26 of 2000)
PFMA	Public Finance Management Act, 1999 (Act 1 of 1999)
PPAU	Public Procurement Advisory Unit
PPPFA	Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)
PSC	Public Service Commission
PwC	PricewaterhouseCoopers
RDC	Differential Public Procurement Regime (of Portugal)
SANACO	South African National Apex Tertiary Cooperative Ltd
SANAS	South African National Accreditation System
SAPS	South African Police Service
SARB	South African Reserve Bank
SARS	South African Revenue Service

SCM	Supply Chain Management
SIU	Special Investigating Unit
SLTI	Secretariat for Logistics and Information Technology
SMME	Small, Micro and Medium Enterprises
SOE	State Owned Enterprise
TFEU	Treaty on the Functioning of the European Union
TI	Transparency International
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law Model Law on Procurement of goods, services and construction works
UNODC	United Nations Office on Drugs and Crime
UNOPS	United Nations Office for Project Services
USAID	United States Agency for International Development
VgG M-V	Vergabegesetz Mecklenburg-Vorpommern (Procurement Law of Mecklenburg-Western Pomerania)
VgV	Vergabeverordnung (Procurement Decree)
VOB	Vergabe- und Vertragsordnung für Bauleistungen (Regulations on Contract Awards for Construction Works)
VOF	Vergabeordnung für freiberufliche Dienstleistung (Regulations on Contract Awards for Services of the Liberal Professions)
VOL/A	Vergabe- und Vertragsordnung für Leistungen, Teil A (Regulations on Contract Awards for Public Supplies and Services)
WRC	Water Research Commission
WTE	Water Trading Entity
WTO GPA	World Trade Organisation Government Procurement Agreement

ABSTRACT

The purpose of the study is to analyse the administration of procurement practices in the South African public sector. Ethical procurement practices prohibit breach of the public's trust by discouraging unethical practices. While the objectives of government are to have positive procurement, practices that are world best practices, there are also negative practices that makes it difficult for the administration of public procurement practices. Owing to the complexity, size and high volumes of financial flow, close transactional relations between public and private sectors public procurement is mostly vulnerable to unethical procurement practices and non-compliance with procurement legislation.

The problem is that, there is a distinct inadequacy of documented academic research to procurement practices, and so is the marred unethical practices. Without doubt, a limited knowledge regarding the nature, size and extent of unethical procurement practices prevails. The objective of the study is to analyse the administration of procurement practices, explore the extent, size, nature, the manifestation of unethical procurement practices and to propose a public procurement framework. The triangulation approach of qualitative research method guided the study. The research design used in the study is an exploratory one with a focus on a multiple case study of seven randomly selected national departments categorised under government guide on clusters "the social protection, community and human development government cluster"

The South African public sector has challenges with regard to the administration of procurement practices in national departments. Despite government codes of conducts mechanisms and policies developed, there seems to be a manifestation of unethical procurement practices. Based on the key findings, the study proposed a Public-Sector Procurement Governance Framework that will be anchored by governance structures, infrastructural tools, and effective systems underpinned by a center-led action network.

Key words: administration, procurement practices, unethical procurement practice, procurement fraud, corruption

CHAPTER 1: INTRODUCTION

1.1. Public procurement practice

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 works and services by the state and its organs when acting in public pursuit or interest. Public procurement constitutes significant modus operandi in the public-sector arena and it thus stands as the procedural requisite for delivery of public services. The case for studying procurement practices in South Africa's administration warrants understanding of both the best and the negative practices in the public sector, which result either in value for money or waste of resources. Public procurement practices for a long time been viewed as not being important to performance and competitiveness in the public sector. However, recent developments in global markets have led to reforms in government procurement practices.

In the 2013/14 financial year, the South African public sector spent R500 billion on goods and services and on construction works (RSA: National Treasury, 2015d: 3). Based on National Treasury information, this study will provide insights into key drivers of procurement practices, which apparently marred by unethical practices.

This chapter will present the background of the study and the motivation for the study; establish the scope of the problem; present the study's methodology; contextualise the research on public procurement practices and challenges in the South African public sector; and provide the chapter outline of the study. The purpose of the study is therefore to analyse the administration of procurement practices in the South African public sector. Public procurement practices is based on the principles enshrined in the Constitution. The chapter will give a background to the procurement practices, and will provide the problem statement, the research questions, objectives of the study,

motivation for the study, clarifications of concepts, organisation of the study, and a conclusion.

1.2. Background to the study

Public procurement is an overall process of acquiring goods, services, public works and services, which includes all functions from the identification of needs, selection and solicitation of sources, preparation and award of contract. Procurement includes all phases of contract administration through to the end of a services contract or the useful life of an asset (United Nations Development Programme (UNDP), 2006:3; Arrowsmith, 2010: 2). The public procurement process as the heart of a sound procurement practice involves more than the procurement process alone; should consist of not only support, but also important components including strategy and policy of the organisation, methods and procedures, personnel and organisation, and information technology. It is emerging that the objectives of public procurement implemented through various means and must follow legal and regulatory rules, and well-set-out procedures and processes.

There is a link between procurement and supply chain management (SCM). It would be beneficial to define in this study what SCM entails before a public procurement definition put into context. The Chartered Institute of Procurement & Supply (CIPS) (2013:3) defines procurement as the business management function that directs identification, sourcing, access, and management of the external resources that an organisation needs or may need to fulfil its strategic objectives. Supply chain management (SCM) is one of the newer concepts dealing with this evolving complexity. Lambert (1994) in Ericsson (2011:47) defines supply chain management as the integration of business processes, from original suppliers through to end user, which provides products, services and information that add value for customers.

A supply chain is defined as a set of three or more entities – organisations (or individuals) directly involved in the upstream and downstream flows of products, services, finances, and/or information from a source to a customer (Mentzer, DeWitt,

Keebler, Min, Nix, Smith & Zacharia, 2001:4). Monczka, Trent, and Handfield (1998) in Mentzer et al, (2001:6) define SCM as a separate materials function to report to an executive responsible for coordinating the entire materials process, which requires joint relationships with suppliers, integrating and managing the sourcing, flow, and control of materials using a total systems perspective across multiple functions and multiple tiers of suppliers. The International Training Centre of the ILO (ITC-ILO) (2012), Kuhn, & Sherman (2014:6) define procurement as the process of acquisition by government and public entities of goods, works and services that are necessary to fulfil their mandate in the provision of services and facilities to the public.

Ambe & Badenhorst-Weiss (2012:339) define public procurement as a function whereby public-sector organisations acquire goods, services, and development and construction projects from suppliers in the local and international market. Public procurement includes many activities that support the service delivery of government entities and the acquisition of items ranging from routine to complex. Walker & Rowlandson (2008), cited in Noor, Khalfan & Maqsood (2013:803), assert that procurement also involves issues such as culture, leadership, management, economics, and environmental, ethical and political issues.

The main objective of procurement should be to achieve a world best practice. A best practice is a method or technique that has consistently shown results superior to those achieved with other means, and used as a benchmark. The purpose of public procurement as a best practice should be to obtain the best value for money. To do this, it is important to consider the optimum combination of whole life cost in terms of the acquisition cost, cost of maintenance and running costs, disposal cost of a purchase, and its fitness for purpose in terms of quality and ability to meet the contracting authority's requirements. That is to say, the contracting organisation or authority needs to compile a procurement specification, which includes social, economic, and environmental policy objectives within the procurement process. Other factors that may also need be taken into account when assessing value for money include availability of suppliers; additional costs, which may vary according to the location of the supplier; and

the requirements of the contracting organisation. The cost of the procurement process should not be disproportionate to the costs of the actual contract. In locating a supplier, for example, in relation to an Information Communication & Technology (ICT) service contract, sourcing a greater number of consultant delivery days from a closer supplier than one who includes travel costs but offers fewer delivery days. Procurement processes within contracting authorities can result in best value for money only when competition among suppliers is encouraged in the most efficient and effective way. Efficiency and effectiveness, as well as fairness, or non-discrimination, sought after in the procurement process in order to secure value for money for the contracting authority. Procurement issues regarding equal conditions and accessibility should be conveyed to all economic operators openly and transparently. Further, accountability for the responsibilities assigned to procurement professional and keeping the appropriate records should be non-negotiable. The matter regarding professionalism cannot be over-emphasised and should be achieved through high standard of professional ethics (Republic of Cyprus, (2007) ([http:// www.publicprocurementguides.treasury.gov.cy](http://www.publicprocurementguides.treasury.gov.cy))).

The administration of procurement best practice should therefore fit the purpose in terms of the application of the legislation; procurement institutional arrangements; procurement procedures; bidding processes regarding demand management/need assessment and In addition, bid specifications; bid evaluation and award; contract management; monitoring of performance; and enforcement of contracts should be top in the agenda. The institutional arrangement or the organisation of the procurement office should, among others, have an e-Procurement infrastructure, be able to collaborate with procurement strategy, staffed, and be able to manage risks effectively.

As indicated above, the administration of procurement practices should be underpinned by four mainstays, namely: procurement laws and regulations; a procurement workforce, procurement processes, methods, and a procurement organisational structure. The government procurement practice should be influenced and determined by its economic, cultural, legal, political, and social environments. The procurement practice can influence its environment and the government framework. A sound public procurement

system needs to have good procurement laws and regulations. Public procurement laws and regulations are considered one of the most important pillars of a sound procurement practice. Procurement laws and regulations can lead to procurement inefficiency if not properly practised.

The principal activities of procurement practice should centre on needs assessment or market intelligence; bid specification; bid evaluation and awards; contract management, which is monitored and evaluated regularly and management of risks done effectively and efficiently. According to the formulators of the Constitution, it is essential that public procurement professionals, suppliers and communities adhere to well-defined and established ethical procurement practices. For the purposes of this study, the public sector consists of the government, publicly controlled, and publicly funded bodies, public entities, and other entities that deliver public programmes, goods, or services. The concept of the public-sector is broader than simply that of core government, and may overlap with the not-for-profit or private sectors. The public-sector consists of an expanding sphere of organisations, with core government at the center, followed by agencies and public enterprises (IIA, 2011:3).

Procurement practices and challenges in the South African public sector have gained inadequate attention from researchers. However, credit should go to scholars such as Bolton (2006, 2008), Pillay (2004), Migiro & Ambe (2008), Pauw & Wolvaardt (2009), Raga, Bayat & Ferreira (2012), Horn and Raga (2012), Ambe and Badenhorst-Weiss (2012), Dlamini & Ambe (2012), Pillay (2013), and Majila, Taylor & Raga (2014), who have researched and contributed to public procurement practices and challenges. It is worth noting that, the volume of research work in this field of study is not sufficient, bearing in mind the magnitude of the challenges of unethical procurement practices in procurement environment. Despite the above studies on the subject, procurement practice challenges are considered a major threat to government and governmental entities, policy makers, and public procurement professionals.

The South African government embarked on procurement reforms in 1994. These reforms marked the transition from the old Tender Board procurement system to the new

democratic supply chain management, which emphasises the principles of procurement practice and the preferential procurement framework across spheres of government. The previous procurement system was unfavourable to black-owned and other small businesses in particular, and did not view procurement as a socio-economic tool that could address development. It was therefore discriminatory. The objectives of the new reform focused attention on objectives such as the promotion of principles of good governance and the introduction of a preferential system to address socio-economic objectives. The other organs of state replicated the procurement reform measures in the national sphere of government. The high-level policy strategy objectives of the transformation agenda as articulated in the (RSA: National Treasury, 2003d:1), public sector is underpinned by imperatives. Such objectives related to promoting uniformity in the processes relevant to the repealing of Tender Board legislation in the various spheres of government; devolving the responsibility and accountability for procurement-related functions to accounting officers/authorities. In addition, the interpretation of government's preferential procurement legislation and policies in the context of other broad-based, related legislative and policy requirements of government was another milestone.

Furthermore, replacing the outdated procurement and provisioning practices in government with a SCM function, devising a systematic of competitive procedure for the appointment of consultants as an integral part of financial management in government that conforms to internationally recognised, best practice and principles was a transformation in the right direction. The introduction of parameters for the promulgation of a regulatory framework in terms of the Public Finance Management Act, 9 (Act 1 of 1999) (PFMA) (RSA, 1999b) and the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA) (RSA, 2003b) to ensure compliance with minimum norms and standards brought policy shift in the field of public procurement.

The National Treasury in particular has contributed positively to procurement improvements reforms since 1994. The 2015 Public Sector Supply Chain Management

Review is a good vision of how public procurement is administered. However, the review policy has not gone fully to the implementation phase. Most of the things in the policy document were just suggestions or recommendations relating to an ideal state (RSA: National Treasury, 2015d). As indicated above, in the 2013/14 financial year, the South African public sector spent R500 billion on goods and services and construction works (RSA: National Treasury, 2015d: 3). This is an enormous amount of money, and wisely and efficiently spent, can ensure that those in need receive services, infrastructure such as roads and ports is built and maintained, schools are well equipped, and health services are widely available. It can also spread wealth to hard-working entrepreneurs who successfully tender for government contracts and, in doing so, create jobs.

Public procurement is one of the areas that could lead to unethical procurement practices. Public procurement is the activity of government most vulnerable to waste, fraud, procurement irregularities and non-compliance with legislation, owing to the complexity, size and high volumes of financial flow and close transactional relations between public and private sectors and institutions of government.

Public procurement is necessary to enable the public service to deliver on its developmental mandate to the South African people to build houses, construct bridges and provide schools with classrooms and textbooks, among others. It is paramount that the administration where goods and services is funded by public expenditure, public procurement should operate ethically, transparently and professionally, especially in the public-sector

A question now arises: Why should taxpayers be concerned about unethical procurement practices in the government procurement system? Taxpayers have reason to be concerned about paying taxes, because they expect public-sector procurement spending channeled towards building of houses, schools, roads, bridges, and other infrastructure development amenities. The study on the administration of procurement practices will put into context why taxpayers are concerned. Taxpayers are worried because they want government to maximise the output in terms of utilising the

procurement budget, which places an inherent requirement on the public-sector to manage the budget provided in a manner that is accountable and demonstrates both probity and a value-for-money impetus. The infrastructure development and other important socio-economic will not be achieved and can be compromised if ineffective procurement practices prevalent in the procurement environment.

The South African government have an excellent procurement best practice. However, there is insufficient original research related to unethical public procurement practices issues in the South Africa public-sector. The exploratory nature of this study will adopt a sequential process of combining the existing unethical public procurement practices literature with real-world practices. The Supply chain management (SCM) theory will underpin the study.

Internationally, the literature on procurement practices is in abundance, with adequate discussion on the effects that procurement has on projects (Noor et al, 2013:804). Public procurement failures often attract attention from the media and other watchdog groups (Snider & Rendon, 2010:332). The media in South Africa on a regular basis written and exposed procurement fraud-unethical practices. However, more research on unethical procurement practices from the academic level is required. The national, provincial government departments and municipalities developed “*fraud strategies and plans as anti-corruption strategies*” for compliance purposes and not for actual implementation and development of procurement practices as an activity of public administration.

The nature of procurement practices challenges differs between the two core stages of the procurement lifecycle, namely: pre-contract award and post-contract award. Unethical practices or corruption in the pre-contract award phase is complex and often enabled by a lack of compliance with policy (National Fraud Authority UK, (2011) (<https://www.cips.org>). The Auditor-General of South Africa (AGSA) always cites non-compliance with legislation as a problem especially in supply chain management (SCM) (RSA: National Treasury, 2015d: 10).

The administration of public procurement practice has a challenge in that public procurement fraud or unethical practices, as an element of corruption seems to manifest in public-sector procurement. Unethical practices or corruption can be likened to economies which go in cycles, and “as booms turns to bust, frauds emerge as big explosion” (Pickette & Pickette, 2002:4). The study on the administration of public procurement practices challenges once completed could be a catalyst by virtue of its nature and points of reference with regard to the suggested measures, and detection and prevention strategies for public procurement fraud in the South African public-sector.

Procurement practice challenges are complex problems apparently perpetrated by those inside and outside government departments and service providers alike (Singleton & Singleton, 2010:56–57; National Fraud Authority, (2011) (<https://www.cips.org>). Seemingly, procurement fraud cases, rarely reported for fear of the repercussions they may have on government and business (Hill, 2010:3). Consequently, it can be difficult to measure the extent of the problem plaguing the South African public sector and the procurement environment. Where fraud detected, resources channeled into investigation and prosecution, which is costly and rarely ends in a conviction or the recovery of losses (National Fraud Authority, (2011) (<https://www.cips.org>).

The purpose of government’s preferential procurement policy is to provide a framework for implementing the principles of preferential procurement (Bolton, 2006:205, 207), while adhering to and adopting fair, equitable, transparent, competitive and cost-effective procurement practices (Section 217(1) of the Constitution of the Republic of South Africa, 1996). Notwithstanding the pieces of legislation, procurement practices is a mixture of positive and negative tendencies. The positive practices emanating from the legislation, and the negative, unethical practices motivated by unethical conduct, will be analysed in subsequent chapters.

Public procurement accounts for between 15 and 20 percent of the GDP (Gross Domestic Product) of countries. The allocation of these funds brings to the fore a vast

array of interests, over both specific tenders, broad national and supra-national legislation regarding procurement. Those interests are non-benevolent, meaning that they are prone to generating corruption, in both poor and wealthy countries. Economic and social development is not sufficient to eradicate corruption (Rose-Ackerman & Søreide, 2011:141).

Thai (2016:1–2) states that public procurement has been perceived as an area of waste and corruption. Uromi (2014:55) identified challenges such as an untrained or poorly trained work force, inadequate accountability for government decisions, and lack of the transparency in the procurement process.

PricewaterhouseCoopers' (PwC) *Global Economic Crime Survey 2014* revealed that vendor selection was the step in the procurement process most targeted by fraudsters, although all steps appear to be vulnerable to fraud. The procurement fraud and non-compliance with legislation is most common at the vendor selection stage, followed by the bid process. The sectors that reported the most procurement fraud were public entities, followed by energy, utilities and mining, engineering and construction and transport and logistics. The report, which was the first to include procurement as a separate fraud category, states that three trends drive the type of wrongdoing, namely: an increase in public tender processes, companies altering their global supply chains, and a rise in outsourcing. The requisitioning of goods was a focus area for procurement fraud (PwC, 2014a:12).

Cited in Munzhedzi (2016), Ababio, Vyas-Doorgapersad & Mzini (2008:3) state that the South African legislative framework underpinning public-sector procurement aims at empowering the previously disadvantaged and provides flexibility to individual public institutions to facilitate efficient service delivery (Ambe & Badenhorst-Weiss, 2012:242). Procurement is deemed to be of particular significance in the public sector in that it has been used as a policy tool to address the discriminatory and unfair practices during apartheid (Bolton, 2006:194, 202–203, 211; RSA: National Treasury, 2015d:13).

However, the laudable policy framework introduced is often grossly undermined by incidents of lack of accountability; political interference; appointment of inexperienced and unqualified officials and contractors; lack of technical expertise in the respective bid committees; lack of understanding of relevant regulatory framework; and non-compliance with the policy framework (Horn & Raga 2012:80).

Hanks, Davies & Parera (2008), cited in Munzhedzi (2016:3), state that there are legislative and regulatory frameworks that outline minimum requirements in the areas of supply chain and preferential procurement. National, provincial departments and local governments extend and develop their own individual policies, systems and structures within the ambit of the national regulatory framework. Despite that, unethical procurement practices still prevail.

Handfield, Monczka, Guinipero., & Patterson, (2011:8), as cited in Dlamini and Ambe (2012:279), state that procurement is a strategic, systematic process of ensuring that maximum value is delivered to the organisation, through identification and selection of suitable and competent suppliers. Notably, negotiating, contracting, conducting supply market research, fostering supplier measurement, and systems development are part of such procurement strategy. In addition, efficient and effective management of public procurement is required because procurement is the fastest growing sector (Dlamini & Ambe, 2012:283).

Sugudhav-Sewpersadh (2015:4) asserts that public procurement is susceptible to corrupt practices, partly because of the large sums involved; non-commercial nature of procuring entities; the nature of the relationship between the decision maker and the public body. In addition, matters, which relate to the measures of unsupervised discretion, bureaucratic rules, and budgets that may not be tied to specific goals forms such susceptibility. Undoubtedly, public procurement also presents an opportunity for unethical procurement practices because of the irregularity of information between the public official and his principal (the government).

Pillay (2004:586) posits that corruption is likely to appear on every observer's list of factors that threaten to obstruct South Africa's path towards sustainable development. However, rather than diminishing, corruption has proliferated in all segments of the South African national public service, making it the "common cold" of South African social ills. Pillay (2013) propagates that public procurement processes are often complex, and transparency of the process is sometimes limited. To this end, manipulation of tendering procedures is difficult to detect. Procurement practices as they pertain to procedures are critical for the sustainability of any public-sector institution. Taylor & Raga, (2010) (<http://www.ippa.org>) state that enacting 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. Procurement practice relates to legislative and institutional requirements; procurement procedures such as open bidding or competitive bidding; and restrictive bidding or proposals. However, procurement practice is marred by unethical procurement practices of fraud and corruption and non-compliance with supply management legislation, which amounts to unethical procurement practices within the public procurement environment.

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. Government institutions are not usually established with a view to profit making, with the consequence that the objectives of their procurement function will differ considerably from the objectives of an establishment in the private sector (Taylor & Raga, (2010)(<http://www.ippa.org>). Nkwe, Singh & Karodia (2015:94) assert that procurement is central to the government service delivery system, and promotes aims that are, arguably, secondary to the primary aim of procurement, such as using procurement to promote social, industrial, or environmental policies (Bolton, 2006:193; Maharaj & Karodia, 2013:45).

It is noteworthy, that despite the reforms, which South Africa pursues, there have been insignificant improvements with regard to curbing of public procurement fraud and corruption as they are difficult to manage. Backlogs regarding the development of small, micro and medium enterprises (SMMEs) is still prevalent. However, various reforms have taken place with regard to socio-economic transformation in the development of social infrastructure, which were not there before, especially in the rural areas (Bolton, 2008:204). Ambe & Badenhorst-Weiss (2012:249–230, 440) assert that SCM is a strategic tool with regard to socio-economic empowerment initiatives. Despite that, South Africa faces still enormous challenges in its public procurement practices relating to non-compliance SCM-related legislation, policies and tender irregularities.

The complex nature of the supply chain management currently applied; exacerbate the unethical public procurement practices in the South African public-sector's context. To this end, National Treasury (2015d: 5) concedes that the strategic importance of supply chain management is not well understood because of the fragmentation of legislation, which is both centralised and decentralised. In addition, repeated negative audit outcome reports by the AGSA highlight the lack of accountability. The public-sector frequently underestimates how important supplier management is in terms of building relationships with suppliers; capacitating SMMEs; weak procurement management and governance; and poor-quality products and services supplied by the private sector (RSA: National Treasury, 2015d:5).

The Minister of Finance in 2015 stated that better value for money in public service delivery depends on rigorous financial management and effective systems (RSA: National Treasury, 2015e:16–17). The Minister emphasised the unrelenting fight against public procurement fraud and that supply chain management in the public sector is far from perfect. The Ministry of Finance contends that there are frequent allegations of public procurement fraud and inefficiency in government (RSA: National Treasury, 2015d: 16).

The study will be catalytic to the administration of procurement practices in the South African public sector. The administration of procurement practices in this study will focus on the application of relevant legislation, institutional arrangement, vendor selection, evaluation, processes and procedures, selection criteria, contract management, remedies and enforcement and bidding processes. The guiding principles of value for money, transparency, accountability, equity, and competition should underpin good governance practices (Section 217(1) of the Constitution of the Republic of South Africa, 1996). The objectives of public procurement are therefore applicable to developed, developing and least developing countries and form an international procurement practice. To this end, the general objective of government procurement is to acquire goods and services, and to work in a manner providing the best value to the government and the people.

1.3. Research problem

Unethical public procurement practices in the South African public sector have been inadequately researched in the academic field. Therefore, the rationale for this study is to analyse the administration of procurement practices in the South African public-sector in order to explore the extent, size, nature and manifestation of unethical procurement practices.

The administration of procurement practices notably, is disparaged by the principal-agent relationship. The relationship between the principal and agency relates to a contract under which one or more persons/principals engage another person or principal to perform a service on their behalf, which involves delegating decision-making authority to the agent. When carrying out the tasks within the principal-agent relationship, the agent must choose actions that have consequences for both the principal and the agent. To this end, outcomes can be either positive or negative for each actor, and the chosen action of the agent affects the welfare of both. In the perspective of the administration of procurement practice in the public sector, the taxpayers through government are the principals and the agents are the public servants

who conduct themselves unethically when handling the procurement process. In terms of the principal–agent relationship, it usually arises from the belief that the agent/public servant possesses the requisite skills and abilities in abundance and/or has time to perform the desired activities (Kamau & Rotich, 2015:1177). The unbalanced agency relationship seems to influence the administration of procurement practices in national departments.

In an effort to formulate a need for the study on the administration of procurement practices in the South African public sector, it can be argued that there is a limited knowledge base regarding the nature, size, and extent of unethical procurement practices in the South African public–sector. This considerably complicates policymaking, specifically with regard to procurement practices as they relate to procurement policy goals. Procurement policy changes is based upon media reports, which poses a serious challenge in the economy at large. With the size of its economy, South Africa has the highest number of reported fraud cases on the African continent, standing at 59 percent as compared to 29 percent globally.

The Public Service Commission (PSC) report (RSA, 2011d: viii) posits that 1 511 cases associated with fraud and bribery had been reported to the National Anti-Corruption Hotline (NACH) as at 31 June 2010. Reporting of unethical procurement practices has been a challenge in government. The PSC (RSA, 2011d: 11) posits that proper reporting is an important step in any process dealing with fraud and corruption. Cases reported to the NACH and referred to departments for follow up and investigation. From September 2004 to 31 June 2010, of the 7766 cases reported through the NACH and referred to departments, feedback was received on only 2811 (36 percent) of them. No feedback was received by the PSC on 4955 cases (63 percent) referred to departments and public bodies.

In light of the above, there is a need for the study on the administration of procurement practices in the South African public sector to be based on the analysis of information of the AGSA, PSC, SIU and national departments available in the public domain for the

period covering the 2011/12 to 2015/16 financial years. Procurement fraud and corruption is not in the mainstream as an academic researchable agenda. The analysis of procurement fraud and corruption in this study forms a negative procurement practice as opposed to procurement best practice. It is against this background that this study will be undertaken.

1.4. Research question

Salkind (2010:1160) asserts that the framing of a qualitative research question will depend on the approach followed. A question tends to be broad and flexible and is not variable driven, and does not seek to link concepts and posit relationships. A common feature is that the research question evolves during the process. Creswell (2014:139) states that the research questions or hypotheses narrow the purpose statement to prediction the learning areas or questions answered in the study.

The research question is an essential part of the research process. It implies an effective connection leading towards secondary knowledge composed of literature reviewed studies, such as those from academic journals and articles. The literature reviewed covers procurement function, fraud taxonomies, and indicators. The research question will serve as the starting point regarding the flow of the study's literature review and will lead to the creation of research methods, techniques and questions.

The general question is:

“Is the administration of procurement practices underpinned by value for money, ethics, competition, transparency, and accountability in the South African public sector?”

The above general research question will find its expression within the objectives of the study.

1.5. Objectives of the research

In responding to the need for the study of the administration of procurement practices in this neglected area of research in the South African public sector, the objectives are:

- (i) To analyse the administration of procurement practices in the South African public sector;
- (ii) To examine the manifestation of unethical procurement practices in the South African public sector;
- (iii) To evaluate the nature, size and extent of unethical procurement practices; and
- (iv) To propose a framework that will guide the South African public sector and address the unethical procurement practices.

1.6. Motivation for the study

This proposed study seeks to serve as a means to analyse the administration of procurement practices in the South African public sector. Despite the efforts, made by crime-fighting units to combat economic crimes in general, public procurement fraud is still an area to which the public sector has not ventured to apply much attention. The public sector focuses on development of anti-corruption strategies, which are inadequately practised. The government's internal auditors focus on planning for general or so-called strategic risks, which government departments may be able to avert and fail to focus much attention on procurement fraud, specifically.

The analysis of the administration of the procurement practices in the South African public sector will fit into the academic environment discourses by including procurement fraud and its associated unethical procurement practices as a research agenda in academics and complement other previous or future research in order to address ethics, accountability, transparency, responsibility, good governance, and corruption issues. Unethical public procurement practice can affect the public's confidence in public affairs, and commonly occurs during the bid preparation process. Costs can be inflated can result in a forgone opportunity regarding funding for major community development

projects and programmes. In the event where procurement fraud occurs when a request for bids gives an advantage to a certain firm, this will result in a public outcry with regard to the integrity of the procurement system and its environment.

Unethical public procurement practice prohibits the public sector from obtaining goods or services at the lowest possible cost. In the light of the above, procurement fraud is one of the costliest types of government fraud, which can affect improvement of the living conditions of the poorest of the poor. When procurement fraud occurs and government swindled, taxpayers may pay the price. The above questions are serious issues that require research put in the context of current public procurement theory in the South African public sector. The public sector, being the largest purchaser of goods and services, can influence the overall resource allocation by government, competitiveness, and economic efficiency in the economy. The outcome of transparency in public procurement through open and non-discriminatory competitive bidding.

The Accounting Officers/Authorities in government have a role to play to fight unethical procurement practices. To put this in context, it seems that there is inadequate leadership by management on how to detect, prevent and investigate procurement effectively, let alone monitor the anti-corruption strategies, which put in place. The inference is that the cases, reported apparently, emanate from whistle blowers, hotlines and the media, and then reported to the justice system investigation. This study on the administration of procurement practices in the South African public sector once completed will alert South African public-sector organisations to guard against unethical practices. It is against this backdrop that it is important to carry out this study. The motivation for this study also lies in the importance of the emphasis on professional ethics and good governance in the administration of procurement practices.

1.7. Research methodology

The methodology explains the research question and its rationale. It also explains the starting point and the directions of the research. The methodology is the general

research strategy that outlines the way in which research is undertaken. Methods, in contrast, refer to the specific means by which data collected and analysed. The study adopted a “case study and triangulation” research design methodology. This section will propose the research design, the method of research to be used, the target population of the study, the sampling technique and sample size, the data collection strategy and the data analysis procedure.

1.7.1. Research methods

This study will use the exploratory approach in analysing the administration of the procurement practices in the South African public-sector. This descriptive type of research will utilise secondary information to pursue the study. The study focuses attention on the qualitative research approach. Qualitative research is investigative, and seeks answers to a question. Qualitative research begins with assumptions and the use of interpretative/theoretical frameworks that inform the study of research problems addressing the meaning individuals or groups ascribe to social or human problems. Creswell (2013:44–45) posits that the researcher will collect data through examining documents and gather multiple sources of data. Rather than rely on a single data source, the researcher will employ inductive and deductive data analysis, observation, emergent design, reflexivity, and a holistic approach to the study.

Qualitative research systematically uses a predefined set of procedures to answer the question, collects evidence, and produces findings that have not been determined in advance. It produces findings that are applicable beyond the immediate boundaries of the study. Qualitative research is preferred in data collection strategies as it provides complex textual descriptions of how people experience a given research issue (Creswell, 2014:185–186).

Peshkin (1993), cited in Leedy and Ormrod (2013:140), asserts that qualitative studies serve purposes such as description, interpretation, verification, and evaluation. Qualitative research is characterised by its aims of understanding aspects of social life.

In data for analysis, qualitative research methods generate words as opposed to numbers. Qualitative research is characterised by its aims, which relate to understanding some aspect of social life; and its methods, which generate words, rather than numbers, as data for analysis (Westmarland 2011:84–85). The qualitative method aims to answer questions about the ‘what’, ‘how’ or ‘why’ of a phenomenon rather than ‘how many’ or ‘how much’, which are answered by quantitative methods (Yin, 2014:238).

Qualitative methods have limitations. The proper analysis of text is time consuming. The good news is that, large samples not needed for qualitative inquiry, as qualitative questioning is open-ended and inductive (Guest, MacQueen & Namey, 2012). Qualitative methods have traditionally been criticised as lacking substance, science and validity.

1.7.2. Target population

The unit of analysis will relate to an organisational level because a representation of the organisation is included in the study. It is easier to generalise at organisational level than if the unit of analysis is on the individual level. Samples randomly selected from 15 national departments in the social protection, community, and human development government cluster informs the study.

In South Africa, government departments are organised according to government clusters. Clusters foster an integrated approach to governance aimed at improving government's planning, decision-making, and service delivery. The main objective of clustering is to ensure proper coordination of all government programmes at national and provincial levels. The main functions of clusters are to ensure the alignment of government-wide priorities, to facilitate and monitor the implementation of priority programmes, and to provide a consultative platform on crosscutting priorities and matters referred to Cabinet for approval (RSA: Presidency, 2014c).

The unit of analysis focused on five government clusters: the economic, employment, and infrastructure development cluster; the governance and administration cluster; the

social protection, community and human development cluster; the international cooperation, trade and security cluster; as well as the justice, crime prevention, and security cluster (RSA: Presidency, 2014c). The targeted population cluster consists of 15 national departments within the social protection, community and human development cluster. Seven national departments randomly selected from the 15 national departments listed under the government guide on clusters: the social protection, community and human development government cluster. The seven national departments are the Department of Cooperative Governance and Traditional Affairs (CoGTA), the Department of Rural Development and Land Reform (DRDLR), the Department of Public Works (DPW), the Department of Human Settlements (DHS), the Department of Basic Education (DBE), the Department of Social Development (DSD), and the Department of Water and Sanitation (DWS).

1.7.3. Data collection

Data collection is available from published records such as media references or newspapers, reports of previous research on public procurement fraud, service records and policy reports, government documents. For example, legislation relevant to public-sector procurement, codes and policies, annual reports, audit reports, books, publications, previous research conducted in the field of procurement practices, magazines, manuals, web-based Internet as a research tool, and journal articles.

1.8. Chapter outline

The study on the analysis of the administration of procurement practices in the South African public sector structured as indicated below:

Chapter 1 outlines the background on the study of administration of procurement practices in the South African public sector. The chapter will formulate the problem statement and research question, and clarify and explain concepts key to this study. This chapter describes the relevant research dimension and explains the objective of the

research study. The chapter highlighted research methodology, motivation for the study and the chapter outline.

Chapter 2 will focus on the conceptualisation of the public administration environment. The understanding of public administration in relation to the role of international public administration and the development of public administration and new public management will be analysed. Principles of public administration within the context of morals, values and ethics will be analysed in this chapter. The elements of public administration environments such as political, economic, social, legal, technological, and international aspects are important because they influence the administration of procurement practices and vice versa. The administrative functions, which are key in the study of the administration of procurement practices in the public sector, will be of paramount importance to this chapter.

In Chapter 3 an assessment of the international procurement practices relating to procurement regulations, institutional requirements, procedures, bid processes and enforcements, and procurement imperatives of the four case studies countries in Asia, Europe and Brazil. The case studies will set a scene in terms of an analysis of the first objective of the study on the administration of procurement practices in the public sector.

Chapter 4 will analyse the administration of procurement practices in the South African public sector. The chapter will also demonstrate and analyse the reform of the procurement practices in the South African public sector. The evaluation of the South African public-sector procurement regulatory environment, procurement practices, procedures and processes will be key to this chapter.

In Chapter 5, the manifestation of unethical procurement practices in national departments will be analysed. Challenging issues such as procurement fraud or unethical procurement practices and corruption, its nature, extent, size, causes, and cost will be important for the discussion on unethical procurement practices. The findings in

case studies from national departments will be central to the discussion on the administration of procurement practices in national departments.

Chapter 6 will conclude the analysis of the administration of procurement practices as expounded on from chapters 2 to 5. The analysis on the administration of procurement practices evaluated and recommendations made in this chapter. The general question of the study, relating to “value for money, ethics, competition, transparency and accountability” which underpins the administration of procurement practices in the South African public sector in terms of whether or not the national departments are adhering to the fundamental principles, will be evaluated. This concluding chapter will present the summary, conclusions, policy interventions and recommendations regarding the pertinent findings from the seven case studies from national departments categorised under the government guide on clusters.

The summary of key findings on the study of the administration of procurement practices in the South African public sector follows in conclusion. This chapter will point to the possible key recommendations relating to governance structures and mechanisms, which can diagnose the public procurement environment. For example, the center-led action network; the matrix management framework; the public procurement advisory units; ethical leadership; performance monitoring and evaluation; skills development and further training; ethical procurement statements; five-year procurement demand planning; the public procurement Code of Ethics and Compliance; the enforcement of procurement practices; and the public procurement committees will be projected in the concluding chapter.

1.9. Conclusion

Chapter 1 as an introductory chapter, articulated on the background to the study, research problem, research methodology, and the chapter outline. The chapter introduced six chapters, which are fundamental to this study. The chapter started with the background on the study of administration of procurement practices in the South

African public sector and formulated the problem statement and research question, and clarified and explained concepts key to this study. The chapter also outlined how the conceptualisation of the public administration environment will be studied. Then followed an outline on the assessment of the international procurement practices and the layout on the administration of procurement practices in the South African public sector. The manifestation of unethical procurement practices in national departments was also outlined. The chapter ended by introducing how the analysis of the administration of procurement practices would be concluded and recommendations made in this study.

In this study, the exploratory qualitative research concentrated on the social protection, community and human development government cluster comprising of 15 national departments and thus seven national departments randomly selected from the cluster. The study on the administration of procurement practices is pivotal for the South African public sector. Public procurement is susceptible to corrupt practices, partly because of the large sums involved usually non-commercial nature of procuring entities and the relationship between the decision maker and the public body.

This study will be catalytic to the administration of procurement practices in the South African public sector as it focuses on the application of relevant legislation, institutional arrangement, vendor selection, evaluation, processes and procedures, criteria, contract management, remedies and enforcement and bidding processes. The next chapter will focus on the conceptualisation of public administration within the context of public procurement perspective.

CHAPTER 2: CONCEPTUALISATION OF PUBLIC ADMINISTRATION

2.1. Introduction

Public procurement is the principal means of organising spending of public resources for delivery of goods and services. In order to understand public procurement in the South African public sector, it is imperative to introduce public administration environments. Public procurement is an important driver of economic growth, and government purchasing influenced by elements of public administration political, economic, social, legal, technological, and international environments. The public administration environments focuses on internal and external influences to assist administration develop a full awareness of the factors involved in public procurement. Public administration therefore focuses on external environmental factors affecting public buyers by exploring political, economic, legal, social, technological and international influences on the supply chain management. This calls for public administrators to ensure that public procurement is planned in line with those mentioned elements, as they are sources of government spending.

The previous chapter outlined the study on the administration procurement practices in the South African public sector and provided a background, research problem, objectives, and methodology, motivation, clarification of concepts and chapter outline. This chapter will form a foundation to highlight issues that have links to the objectives of the administration of procurement practices, the nature, size and extent of manifestation of unethical procurement practices, and the framework of procurement practices. Theories provide understanding of social phenomena, for example, public procurement practices, procurement procedures, contract management, transparency, ethics and unethical procurement practices. Therefore, an understanding of theories, practices, activities, the development of public administration, and the new public management will be paramount for the analysis of the public administration environments. Further, the purpose, functions, role of the state and public administration generic administrative functions will be analysed in this chapter.

2.2. Understanding Public Administration

The object of the study of Public Administration is paramount for understanding what public administration is, because the object of study of Public Administration is public administration (Rutgers, 2010:11). Public administration as an activity and field of study is important for public procurement in the South African public sector. Public procurement is one of the subfields within the public finance/public expenditure paradigm. The exceptionally practical science of administration is finding its way into the academic institution courses and will prove that the South African public sector needs to know more about Public Administration as a field of activity, domain and discipline. Public procurement is an activity of government and as such, Public Administration will enhance its role to national economic contribution, social responsibilities, industrial policy innovation, and leadership in government officials through courses, offered in the institution of higher learning. The principles of Public Administration will thus guide as to how procurement training is arranged for public procurement officials and the principles put into practice. In order to gain an understanding of public administration as a practice and a discipline, principles of Public Administration as a science will be analysed in this section.

2.2.1. Public administration

There is no generally accepted definition of public administration. Various scholars offer various definitions of public administration. Morrow (1980:1) in Ijeoma (2013:14) refers to public administration as all those processes that contribute to the efficient implementation of a predetermined goal or policy. He defines public administration in terms of a political approach because government does almost everything relating to public affairs and accords public administration a managerial definition because without the management aspect of public administration, not much public business get done (Ijeoma, 2013:14–17). The real core of public administration is the basic service, which performed for public (Wessels & Pauw, 1999:27). Public administration referred to as the

functions or phenomena practiced in the political environment, aimed at satisfying societal needs as perceived in a specific financial year (Thornhill & Van Dijk, 2010:101).

Denhardt, Denhardt and Blanc (2014:1–2) assert that public administration is concerned with the management of public programmes. Fox, Schwella and Wissink (2004:2) and UNDP (2003:1) define public administration as that system of structures and processes, operating within a particular society as environment, with the objective of facilitating the formulation of appropriate governmental policy, and the efficient execution of the formulated policy.

Public administration has two closely related meanings in terms of management and implementation of government activities dealing with the implementation of laws, regulations and decisions of the government; and management related to provision of public services (Ijeoma (2013:16). Further, it is the aggregate machinery dealing with policies; rules; procedures; systems; organisational structures; personnel funded by the state and in charge of the management and direction of the affairs of executive government; and its interaction with other stakeholders in the state, society and external environment. This definition links well with the administration of procurement practices in terms of public procurement, equated with public expenditure. The issues of procurement policies; rules; procedures; organisation; personnel; and financing fits the purposes of the administration of procurement practices of the public-sector.

2.2.2. Public administration as a discipline

The field of study of Public Administration is a relatively young discipline. Raadschelders (2011:12) states that the study of public administration is focused on the structure and functioning of government in relation to the demands and needs of citizenry living in a particular state and in terms of jurisdictions well defined, sovereignty or territory. However, in the past 100 to 150 years, government has grown to become a complex service provisioning and policy-developing institution the size of which has no historical precedent.

The study of public administration has grown significantly, as a function of government has expanded role and position in society. Much scholarly research devoted to describing and analysing government and to developing methods adequately capturing government (Raadschelders, 2011:1). The study of Public Administration is unlike the study of most other subjects undertaken at university, such as biology or mathematics. The study of Public Administration encompasses wide range of subjects and a variety of approaches (Denhardt et al, 2014:14).

An efficient, responsive, transparent and accountable public administration is of paramount importance for the proper functioning of a nation and the basic means through which government strategies to achieve the public services implemented. Public administration is one of the main vehicles through which the relationship between the state and civil society and the private sector is realised, particularly equitable growth, poverty reduction, peace, and stability (UNDP, 2003:1).

Public administration treated as though it is one of the social sciences, a discipline in some sense. As the number of programmes offering doctoral degrees in the field has increased, this interpretation has gained strength. In some countries such as the United States (US), public administration is a formal, degree-granting field at both the undergraduate and post-graduate levels (Denhardt et al, 2014:15). Students who aspire to public administration careers at the highest levels of the professional public service compete for admission to special academies and schools, which serve this purpose and sharpen their own skills in order to understand the field of public administration. The evolution of modern and contemporary Public Administration has tended to develop a more or less regular set of subfields, approaches, and topical interests such as procurement procedures; procurement legislation; the bidding process; demand management; logistics; contracts; performance management; and enforcement of procurement legislation. The stated subfields, approaches and topical interests as indicated will enhance the administration of procurement practices in the public sector.

2.2.3. Public administration as an activity

Public administration as an activity existed during the pre-history stage. For example, the consultant administrators, as articulated by Schumpeter. Public administration practised, and public finances were organised at that time. The practitioners lacked systematic habits and the erudition of academic professionals, although they made up for these shortcomings by their command of facts and the freshness of their outlook (Schumpeter, 1954:159–160).

The activity of public administration has to do with government institutions producing certain goods for and providing services to the community (Du Toit & Van der Waldt, 1999:8). Public institutions exist to meet society's needs or public goods through the procurement of goods and services. Public administration as an activity refers to the work done by officials within the government institutions to enable different government institutions to achieve their objectives at national, provincial and local levels. Governments expected to render certain services to society because individuals cannot meet some of their own needs in specific situations.

In practice, public procurement is an ongoing activity through which different and conflicting demands accommodated. The procurement demands may emerge from political relationships or budgetary constraints, from personnel obligations or standards of ethical conduct, from economic crisis, or changing technologies. The procurement demands ever present and invariably create stresses and uncertainties for public programmes, formulation and implementation of policies (Shafritz, 2000:3–5). The administration of procurement practice planned in such a way that is able to address such conflicting demands.

2.2.4. International public administration

In this section of the history of public administration, the role, which Public Administration played towards its development as a science and the evolution of New

Public Management (NPM), will be analysed. International organisations have contributed massively towards the development of the modern study of public administration as a specialised academic or scientific study is still evolving.

2.2.4.1. International texts on public procurement

An appropriate system of public procurement, as required under article 9(1) of the United Nations Convention against Corruption (UNCAC), is considered core component of any government programme. In particular, the volume of public funds spent on public procurement and the multiple negative effects of corruption in public procurement are reasons that, apart from the United Nations Office on Drugs and Crime (UNODC), several other international organisations promote the implementation of appropriate systems of public procurement. In this regard, the World Trade Organisation (WTO) Government Procurement Agreement (GPA), the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement, and the European Union (EU) Public Procurement Directives (EU Directives) are most important from a legislative perspective, as they are the models most often examined when drafting procurement legislation. It is paramount to illustrate what the Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement, the World Trade Organisation (WTO) Government Procurement Agreement (GPA) means in this study.

The GPA (Government Procurement Agreement) is a plurilateral agreement within the framework of the WTO (World Trade Organisation), meaning that not all WTO members are parties to the Agreement. At present, the Agreement has 19 parties comprising 47 WTO members. Another 31 WTO members participate in the GPA Committee as observers. Out of these, 10 members are in the process of acceding to the Agreement.

The fundamental aim of the GPA is to mutually open government procurement markets among its parties. The GPA is composed mainly of two parts: the text of the Agreement and parties' market access schedules of commitments. The text of the Agreement

establishes rules requiring that open, fair and transparent conditions of competition ensured in government procurement. However, these rules do not automatically apply to all procurement activities of each party. Only those procurement activities that carried out by covered entities purchasing listed goods, services or construction services of a value exceeding specified threshold values covered by the Agreement. The GPA as a binding internationality treaty administered by the Committee on Government Procurement, which is composed of representatives of all its parties. The enforcement of the Agreement realized through two mechanisms: the domestic review mechanism at the national level and disputes settlement mechanism at the international level (2011a).

The UNCITRAL Model Law on Public Procurement is an international instrument to regulate procurement and promote the objectives of maximizing economy and efficiency in procurement; fostering and encouraging participation in procurement proceedings by suppliers and contractors regardless of nationality, thereby promoting international trade; and promoting competition among suppliers and contractors for the supply of the subject matter of the procurement. In addition, UNCITRAL Model Law on Public Procurement objects are providing for the fair, equal and equitable treatment of all suppliers and contractors; promoting the integrity of, and fairness and public confidence in, the procurement process; and achieving transparency in the procedures relating to procurement (2011b).

A comparison of these international texts shows that while the comprehensiveness of the rules framing an efficient procurement system varies significantly, the same principles underpin the rules set out in all the texts. All the texts designed to promote procurement systems based on the cornerstone principles of transparency, competition and objectivity, as required under article 9(1) of UNCAC (UNODC, 2013:46). In addition, there are International standards of supreme audit institutions such as INTOSAI GOV 9100 OECD Governance Review (OECD, 2012:37, 291). The above public procurement international instruments are essential for in-transition and developing countries to benchmark against and learn from the best practices.

2.2.4.2. Theories of public administration

A theory is a systematic grouping of interdependent concepts. Mental images of anything formed by generalisation from particulars and principles are generalisations or hypotheses, tested for accuracy, and appear to be true and able to reflect or explain reality that gives a framework to, or ties together, a significant area of knowledge. Hawking (1996) in Oyedele (2015:7) asserts that theory is “in its lowest form a classification, a set of pigeonholes, a filing cabinet in which fact can accumulate. Theories provide logical structures for explaining and predicting individual and social phenomena” (Thornhill & Van Dijk, 2010:97). Theory leads to a more comprehensive understanding of phenomena of interest than would ever be possible in its absence. In the ideal sense, theories should have an acceptable degree of validity, meant enabling understanding and prediction, and a corresponding degree of utility for practitioners. Theory fosters understanding not only in the academic realm but also in the everyday management of procurement organisations (Flynn & Davis, 2014:144–145).

Public Administration has developed as an academic discipline through a number of stages. These stages are categorised under different paradigms. Different authors have given their classification. However, there is a great deal of uniformity in their scholarships (Basheka, 2012:34). Oyedele (2015:2) states that public administration is a combination of theory and practice.

Theories provide a stable focus for understanding what people experience; provide criteria for what is relevant; enable efficient communication; move to what is more complex in relationships; and enhance continuous learning about the world (Rutgers, 2010:10). Henry (2013:36) asserts that Public Administration has developed as an academic and professional field through a succession of four phases of historic development, namely: prehistory, the classic period, the modern study of Public Administration, and the differentiated or contemporary period.

The theories that assisted the development of Public Administration and the public procurement *per se* were also established. The eighteenth-century academics were curious and started to develop more systematic and theoretically founded approaches to the study (Rutgers 2010:7; Raadschelders, 2011:158). Ideas for the improvement of public ethics and a study of administration started to develop in the United States. Traditionally, Woodrow Wilson's essay "The Study of Administration" (1887) viewed as the first herald of the new study (Henry, 2013:37). The key assumption and strategy was the idea of separate politics and the administrative functions of government, and promoting efficiency and effectiveness (Basheka, 2012:35; Holzer & Schwester, 2011:31; Henry, 2013:37).

During the 1970s, through public administration and management linkages, it was felt that government administration needed and conducted by replicating private sector management styles. F.W. Taylor (1911), well known for his scientific principles of management (Christensen & Lægheid, 2013:22), considered that all work processes could be analysed in discrete tasks and by a scientific method as it was possible to find "one best way" to perform each task. Taylor advocated principles such as division of labour; authority and responsibility; discipline; unity of command; unity of direction; subordination of individual interest to general interest; remuneration of personnel; centralisation; scalar chain; equity; stability of tenure of personnel; initiative; and *esprit de corps* (Basheka, 2012:38). Taylor's analysis implied in the procurement process in relation to pre-procurement analysis, such as needs/demand management; assessment and market analysis to guide in terms of how goods, services and public works can be effectively and efficiently procured in terms of the value for money principles.

Weber attested to a well-defined hierarchy, division of labour and specialisation, rules and regulations, impersonal relationships between managers and employees, competence, and records management in organisations. In 1937, Gullick and Urwick, promoted seven principles of administration. This innovation gave students of public administration that snappy acronym, POSDCORB, made up of the initial letters of planning, organising, staffing, directing, coordinating, reporting and budgeting. These

principles have to date had a lasting impact on the management and administrative discourse even in public procurement (Henry, 2013:39). The study on the administration of procurement practice applies the concepts as promoted by Gullick and Urwick.

During its development, Public Administration accosted with an identity crisis. Public Administration born within the folds of political science and/or law and had quickly developed an interest in the principles of organisation management and leadership in a desire to help resolve practical problems (Raadschelders, 2011:19). In 1948, Waldo attacked the gospel of efficiency in his book; “The Administrative State” warned a framework of consciously held democratic values back public administrative efficiency (Basheka, 2012:47–51; Raadschelders, 2011:19, 150; Oyedele, 2015:21).

The era of New Public Management 1960 – 1970 emerged and a proposal for a replication of the private sector to public management and administration emerged. The demands made on the public administration were to make savings in public expenditure, obtain greater efficiency and effectiveness, and improve the quality of public services and public management reform was undertaken (Haque, 2001:65; Webb (2007:1–2). In the early 21st century, calls for a broadening of the field from ‘public administration’ to ‘governance’ were prominent (Rutgers, 2010:10; Rodríguez, (2014) ([htt://grupo.us.es](http://grupo.us.es)); Gruening, 2001:2).

In the administration of procurement practices, governance is key ethical driver in the administration of procurement practices for example, the Institute of Directors in Southern Africa (IoDSA) (2016:20) states that corporate governance is the exercise of ethical and effective leadership by the governing authority including procurement authorities. As cited in Kgomo and Plant (2015:86), Trevino and Brown (2006:595-596) assert that ethical leadership should be effective in order to translate decision-making and tone-on-top to fruition. Ethical leadership and effective leadership should complement each other. Table 2-1 tabulates the notions of governance as expounded above.

Table 2–1: Prerequisite for ethical leadership

Ethical leadership	Effective leadership
<ul style="list-style-type: none"> ◆ Effective leadership exemplified by integrity, competence, responsibility, accountability, fairness and transparency. ◆ It involves the anticipation and prevention or amelioration of negative consequences of the organisation’s activities and outputs of the economy, society and the environment and the capitals* that it uses and affects. 	<ul style="list-style-type: none"> ◆ Effective leadership is results driven. ◆ It is about achieving strategic objectives and positive outcomes. ◆ Effective leadership includes, but goes beyond, an internal focus on effective and efficient execution.

* This is a reference to the “six capitals” model proposed by King in his 2016 *Report on Corporate Governance*.

Source: Adapted from The Institute of Directors in Southern Africa (IoDSA). *King IV. Report on Corporate Governance for South Africa 2016* (2016:20)

The theories demonstrated issues relevant to the administration of public procurement practice, namely: conflict of interests in organisations; governance; effectiveness; efficiency; professionalism; leadership; and improvement of administrative practices such as planning, organising, staffing, directing, coordinating, reporting and budgeting. The theories also demonstrated that stability of tenure of personnel; rules and regulations, competence, records management, and good governance are paramount. The theories, demonstrated in this study, will improve the focus on public procurement as a policy tool. The theories relate to performance based regarding the implementation of legislation and institutional arrangements of the procurement environment, the provision of qualified, high-quality professional staff, and the implementation of procurement procedures and the bidding process in a manner, which highlights accountability and transparency, and ensures value for money, probity and competition.

2.2.4.3. Principles of public administration

Public administration principles are those norms which political office bearers and government officials must comply with in carrying out their work to serve the community and which members of the public comply with in their engagement with government institutions and officials (Du Toit & Van der Waldt, 1999:8-9). The principles of public administration are essential for a subfield such as public procurement, where major government spending takes place.

Section 195(1) of the Constitution of the Republic of South Africa, 1996 states that Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (i) A high standard of professional ethics must be promoted and maintained;
- (ii) Efficient, economic and effective use of resources must be promoted;
- (iii) Public administration must be development-oriented;
- (iv). Services must be provided impartially, fairly, equitably and without bias.
- (iv) People's needs must be responded to, and the public must be encouraged to participate in policy making;
- (v) Public administration must be accountable;
- (vi) Transparency must be fostered by providing the public with timely, accessible and accurate information;
- (vii) Good human-resource management and career-development practices, to maximise human potential, must be cultivated; and
- (viii) In addition, Section 195(1) of the Constitution of the Republic of South Africa, 1996, further stipulates that public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past in order to achieve broad representation.

The Constitution of the Republic of South Africa, 1996, offers outstanding principles in terms of how public administration practised in government. Respect for due process has become important in the discipline of public administration, business administration, and related areas. The obligation to the Constitution is a legal obligation, but it is also a source of ethical obligations, which may be symbolised and solemnised by an oath to uphold and defend the Constitution.

Fox (2010), as cited in Fourie (2015) (<https://www.researchgate.net/publication>), states that there are fundamental principles that direct human effectiveness, principles such as fairness, integrity, honesty, human dignity, service, quality, excellence, potential, and growth. In addition, fairness in public-sector procurement is an obligation of the public sector where administrative reasonableness can be tested against procedural fairness.

Public administration principles can further be broken down in terms of public-sector procurement rules, principles and procedures. The abovementioned values should guide all procurement practices, policies and how they are implemented (Dobie & Xinwa, 2015:3). Aziz, Rahman, Alam & Said (2015:163) are of the view that governance in public administration has become a global issue because of the continuous stream of governance failures, fraud, inefficiency, corruption, and poor internal control and financial management. Professional ethics and efficient and effective use of resource allocation are critical.

Procurement legislation strictly defines public procurement procedures, followed in the public sector. The optimal procedure depends greatly on the subject matter of a contract and can be selected and applied from among open, restricted, negotiated, competitive dialogue, and solicitation procedures. The procurement procedure further consists of several different tender stages.

To guide the above procedures, there are key principles that apply to public procurement. For example, accountability, value for money, competition, transparency, and equity. Aziz et al (2015:164) state that accountability is always related to good

governance, which implies that public organisations which conduct public matters, manage funds and guarantee the realisation of human rights in a way fundamentally free from abuse and corruption are holding themselves accountable as well as obeying the rule of law.

Accountability has been evolving and expanding into a broader concept of integrated financial management and stewardship in respect of the effective and efficient use of financial and other resources in all areas of government operations. Accountability in the public sector relates to dual aspects: accountability *for what* and accountability *to whom*. Accountability is a political construction. The processes of public accountability are shaped by the overall political, institutional and fiscal structures (Holzer and Schwester, 2011:21; Peters & Pierre, 2012:713). The basic principles of good procurement practice, which include accountability, must be in place in order to enable procuring entities to spend limited resources carefully (Kgomo & Plant, 2015:90). Jeppesen (2010) (<http://www.unpcdc.org>) and Schapper (2008:116) state that accountability constitutes a central pillar of any public procurement system. The access to key procurement information by members of public, the media and other stakeholders directly affects accountability.

Value for money is the primary driver for procurement. It usually means buying the product or service with the lowest whole-life cost that is 'fit for purpose' and meets specifications such as economy and efficiency, effectiveness and quality, and targets set to measure performance (Arrowsmith, 2011:25). Efficiency in conducting the process of procurement is another important objective that also holds significant cost implications. Efficiency balanced against competition as a means of achieving value for money (Arrowsmith & Quinot, 2013:9; USAID, 2013:7). Dagbanja (2011:133), cited in (Fourie (2015) (<https://www.researchgate.net/publication>) defines best value as "the provision of economic, efficient and effective services, of a quality that is fit for purpose, which are valued by their customers, and are delivered at a price acceptable to the taxpayers who fund them". In order to attain value for money and to work as a proper tool for the public

sector, public procurement activities need to take place in competitive markets (Graells, 2016:2).

The competition principle is a key factor for governments and their citizens to achieve the best value-for-money deals. It leads, in particular, to lower prices and better quality of goods, services and works (UNODC, 2013:9). The principle of free competition refers to procurement requirements that apply equally to all suppliers (Garcia, 2009:239). Competition plays an important part in ensuring integrity in the procurement system by creating incentives for bidders to monitor compliance with rules in a given procurement. Competition is a disciplining force for both buyers and sellers (Sobel, Gwartney, Stroup & Macpherson, 2011:349; Krivinsh & Vilks, 2013:238).

Transparency is a key feature of a sound procurement practice regarding limitation of the discretion of officials and the provision of a system for monitoring and enforcement. Transparency is the prohibition of discrimination, promotion of equality, transparency, and relativity. The principle of non-discrimination means that all of the offering bidders handled in the same way, no matter the origin of a bidder. Equality means that a tender needs to be formulated in such a way that it does not set offering bidders off in an unequal position towards each other (USAID, 2013:7; Schiavo-Campo & McFerson, 2014:385; UNODC, 2013:8; IoDSA, 2016:18).

The principles of public administration and the attendant procurement principles are core to public procurement practice. The principles of public procurement create a difference between the public and private procurement procedures. Private-sector bidders can more freely and choose how and where they buy, but the organs of the state always have to make sure that the principles followed when procuring goods and services. The purchasing authority needs to find a good balance in order to avoid any unethical procurement practices but at the same time making sure those public funds are used broad representation.

2.2.4.4. The nature of public-sector procurement

Government purchasing influences both domestic and international trade, given that governments spend approximately 10 to 15 percent of their GDP in the procurement marketplace (UNOPS, 2011:2). In the South African context, public procurement spending represents 29 percent of South Africa's GDP (Turley & Perera, 2014:1). Public procurement is a socio-economic tool used by the government to improve the conditions of lives of people through establishment of SMMEs and job creation. Procurement of goods, works and services contributes enormously towards economic growth. Governments spend public monies to secure inputs and resources to achieve their objectives and create significant impact on key stakeholders and wider society.

Section 217(1) of the Constitution of the Republic of South Africa, 1996, refers to contracting authorities as national, provincial and local spheres of government and the public entities. The responsibility and thrust of public procurement legislation relies heavily on the connection between contracting authorities and the state. The structure of the legislation is made up of the Constitution, 1996 (RSA, 1996); the Public Finance Management Act, 1999 (Act 1 of 1999) (PFMA) (RSA, 1999b); the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) (PPPFA) (RSA, 2000c). In addition, the Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA) (RSA, 2003b); the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003) (BBBEEA) (RSA, 2003a); procurement regulations; and other pieces of legislation complementing the ones above. The complement does embrace the purchasing behaviour or practice of all organs of state and their entities, which in essence have a close connection with the state.

The national departments and public organisations disburse public funds on behalf of the public. It is emerging that public procurement plays a significant role in government in terms of the creation of economic opportunities for the inhabitants of a country. The administration of procurement practice can play a role in ensuring that goods, services and public works channeled in a manner in which jobs created.

2.3. The public sector

The public sector is the key machinery of the state. The IIA (2011) defines the public sector as consisting of governments and all publicly controlled or publicly-funded agencies, enterprises, and other entities that deliver public programs, goods, or services (Ghansah, 2016:8). Public services provision tends to take place because of three slightly overlapping roles, such as a regulatory role, an enabling role, and direct provision of goods and services. According to Lienert (2009:10–11), the public sector is comprised, at the broadest level, of public entities and “general government”. Since public entities may be either financial or non-financial, the public sector therefore encompasses three broad economic sectors: government, financial and non-financial institutions. An entity is a legal entity created to produce goods and services for the market. Shareholders who have the authority to appoint directors responsible for its general management collectively own entities. Public enterprises are resident public corporations owned and/or controlled by government units (Lienert, 2009:11–12). The public sector governed by the values and principles of effective, efficient, transparent, accountable and coherent government (Rose & Lawton, 1999:63).

Schiavo-Campo and McFerson (2008:40) define public sector as a general government plus all financial and non-financial entities that are majority owned by the state. Hughes (2012:21) defines the public sector as engaged in providing services and in some cases goods the scope and activity determined by the decision of government bodies, which means, in a democracy, by the representatives of the citizens.

The organs of state and entities decide on the financing of general interest and the calculation of any extra cost attributed to the provision thereto (Bovis, 2012:261, 266). Public-sector funding sources drawn from taxes and fees and carry with them innate external regulations regarding their use; while private sector organisations generate revenue through the sale of goods and services. As cited in Ghansah (2016:8), Telgen, Zomer and De Boer (1997) assert that public-sector procurement considers the

development of its local economy and small businesses, job creation, fair competition, and transparency seriously.

2.3.1. Public-sector organisations

A public-sector organisation owned by the government as opposed to private-sector organisations, controlled by private individuals. Public-sector organisations provide general services for the public or citizens of a country regardless of an individual's ability to pay for the service (Dzuke & Naude, 2015:2). The policies of public enterprises control their policy and activities. Public enterprises are supposed to be autonomous in their day-to-day operations.

2.3.2. Cooperation between the public-sector and the private sector

The cooperation between the public sector and private sector relates to a situation where both government (the provider of contracts) and the private sector (the recipient of the contracts) cooperate effectively so that the procurement system runs successfully (Arrowsmith & Trybus, 2003:6). Public procurement is a partnership between government and the private sector. If only one of the partners is functional, the system will not work. If the public sector and private sector work hand in hand, the system works better. The administration of procurement practice has to guide state departments and suppliers as to how procurement legislation and regulations applied and complied with during implementation. The guidance must take into cognisance the public resources channeled in government departments.

The public sector and private sector have to appreciate the trends taking place within the procurement environment. Public spending continues to grow, and it is important that these funds spent wisely. Public expenditure nevertheless continues on a large and necessary scale. As indicated in chapter 1 of this study, in 2013/14, the South African public sector spent R500 billion on goods and services and on construction works, which supported and enabled the delivery of services to the country's residents. The creating

of a conducive environment for transacting between the public and private sectors and looking into the whole question of SCM procedures and processes as having to be cost-effective, inexpensive, transparent, and free of unethical procurement practices is important. The imperatives with regard to good governance and accountability, cost-effectiveness, both financial and in terms of human capacity, include reduction of barriers to entry for SMMEs and emerging contractors, effective supplier participation, and improved contract management, leading to increased savings and good-quality on-time delivery.

2.4. Purpose, function and role of the state

The definition, analysis of the purpose, function and role of the state is key in this section. Thornhill (2012:124) defines a state as a demarcated geographical area with a permanent population government by a legitimate governing body. A state comes into being because of people undertaking processes to formulate policies. This culminates in a constitution for that state. Arrowsmith (2011:111) defines a state as including all the bodies exercising legislative, executive and judicial powers at national, federal or local level.

The definition of state as applied in functional terms includes bodies, which are formally separate from the state administration. Such bodies do not have distinct legal personality the composition and functions laid down by legislation. Public procurement fits into the state's purpose, role and function, especially as it relates to the promotion of socio-economic goals of the state and expenditure management.

Service delivery by the state through public administration is both a consequence of and integral to the rights of its citizens through its classic concept of public goods. The purpose of the state is therefore to establish and maintain peace, order and security. The constitutions of various countries codify views as to the purposes, powers and forms of their governments (Ankita, (2011) (<http://www.preservearticles.com>); Wessels & Pauw, 1999:26).

Government is the totality of structures and organisational arrangements to exercise the sovereignty authority of the state (Schiavo-Campo & McFerson, 2008:39). The principles of state built on rationale flowing from civil liberties, legal equality, popular representation, and participation of citizens. Public procurement is an important function of the state and as such, it would be imperative in the administration of procurement practice to ensure that public funds are utilised for the purpose for which intended.

2.4.1. Functions of the state

The most fundamental function of government is the protection of individuals and their property against acts of aggression. Individuals constantly threatened by the invasion of others. Sobel et al (2011:108) state that for centuries, philosophers, economics, and other scholars have debated the proper role of government.

In a mixed economy such as South Africa has, the state plays an important role in the economic life of the state through the revenue and expenditure measures of its budget to the allocation, distribution and stabilisation functions of the state. The state has to provide for public goods such as national defense and government services. The goods and services provided through market mechanisms but are essential for citizens or consumers, and government has to provide them. Government redistribute income or grants among their citizens. Government also redistributes income by way of the burden of the taxes allocated among different classes on an economy-wide basis rather than between selected individuals and classes, programmes or social instruments such as taxation, welfare, public services, land reform, and monetary policies, to mention just a few examples. The government spends money on public goods because there is market failure when public goods left to the private sector (Begg, Vernasca, Fischer., & Dornbush, 2011:341).

The state has to allocate resources between private goods and public goods (Anand, (2011) (<http://www.preservearticles.com>). Efficient resource allocation depends on compiling a list or complete description of who does what and who gets what in the

economic set-up. The other central economic purpose of government is to assist in the socially desirable allocation of resources (Begg et al, 2011:340). The policies to implement include the Preferential Procurement Policy Framework Act, the B-BBEE policy, the SMME policy, the industrial policy, and the PFMA competition policy, as well as other policies that can assist in regulating social imperatives in a country.

The most important productive functions of government is providing a stable monetary and financial environment. The government's tax, spending, and monetary policies exert a powerful influence on the stability of the overall economy (Gildenhuys, 1997:398). A stabilisation policy can help moderate the up and down movement of unemployment statistics, or can contain inflationary excesses (Samuelson & Nordhaus, 1985:700–701). Public procurement policies will be affected by any stability or instability in a country (Anand, (2011) (<http://www.preservearticles.com>).

The public-sector manager has a role to play by applying the public choice diagnoses effectively. The public choice analogy or theory directs what governments ought to do, in particular in the administration of procurement practices. Government ought to establish a just and effective legal procurement framework; ought to conduct optimal macroeconomic policies to stabilise output, unemployment and inflation; they ought to regulate industry, to combat market failures; ought to redistribute income to the most deserving. The administration of procurement practice should be organised in such a way that the distribution, resource allocation and stabilisation functions achieve value for money.

2.4.2. Role of the state

Thornhill, Van Dijk and Ile (2014:130) identified the following roles of the state as providing economic and infrastructure development, various collective goods and services, and the resolution and adjustment of group conflicts. In addition, as the economy and stabilisation of the economy are fundamental, the state needs to provide for the following: the maintenance of competition; protection of natural resources; and

minimum access by individuals to goods and services. The role of the state is to direct the socio-economic goals through the implementation of procurement policies. The role of the state in society should be of great interest to public managers (Hughes, 2012:19).

The state has a multi-pronged role to play in public administration relating to promotion, enabling and protection roles in the economy. Public infrastructure development should be the norm in the administration of procurement practice in the public sector. The state can fulfil its purpose when the administration of procurement practice geared towards long-term planning of infrastructure development. The proper plan is a plan that has long-term investments in public services.

As cited in Cawe (2014:1), McCrudden (2004:257) asserts that procurement policies in South Africa targeted as a vehicle to achieve a range of social objectives. Public procurement allows the government to combine two functions i.e. that of a purchaser and regulator in the market using its purchasing power to achieve social justice.

The regulatory framework within the confines of the administration procurement practices provides impetus within the South African public sector. In the short term, South Africa needs to bolster business and consumer confidence to support higher levels of investment. Broad-based transformation requires improved education and skills development; private-sector participation in sectors dominated by public enterprises in order to promote competition and reduce costs; expansion of urban infrastructure development; and regional integration (RSA: National Treasury, 2017a:11–12).

Regulatory measures such as economic regulations that directly affect the market, relating to rules on pricing, completion, market entry or exit, employment, contract enforcement, and access to credit and social regulations in order to protect public interests are important (Gildenhuys, 1997:219; Samuelson & Nordhaus, 1985:700). Several departments are orientated towards serving specific customers and the SMMEs. In some cases, major industrial projects can benefit from bidding between competing suppliers. It is emerging that national departments can play a role in the promotion of

public procurement. In the international arena, the section of the dti (formerly referred to as the Department of Trade and Industry) dealing with SMMEs, the Department of Environmental Affairs, and the Department of Tourism can play a major role in ensuring that government procurement is promoted sufficiently. In terms of the enabling role, departments such as CoGTA, the dti with regard to SMMEs, Human Settlements, Water and Sanitation, Social Development and the National Treasury will play an enabling role in the administration of procurement practice. With regard to the regulatory role, the National Treasury will play a leading role in ensuring that the supply chain practices adhered and reformulated in the event that they are outdated.

2.5. Environment of public administration

The administration of procurement practice in the public sector affected by certain macro-environments within the public administration. The increasingly larger role of government institutions is playing out in societies, and the complexity of government activities currently being undertaken, especially in procurement of public goods, infrastructure provision and multi-billion government services in general, brings with it challenges and opportunities within the public administration environment (Van der Waldt & Du Toit, 1999:376). The political environments are important external influences on the management of public-sector procurement. This section will analyse the political, economic, social, legal, technological and international environments.

2.5.1. Political environment

The political environment is a core element of globalised public-sector procurement. Within the political environments, there resides a political system designed to integrate the parts of society into a viable, functioning unit. A country's political system has an enormous impact on how business conducted domestically and/or internationally (Hough, Neuland & Bothma, and 2004:123).

The greater the involvement in public-sector procurement, the greater the need to monitor the political climate of the country in which procurement business conducted (Fox et al, 2004:19; Van der Waldt & Du Toit, 1999:378). International bodies such as the United Nations (UN), EP, and AU have political effects that transcend national borders and they use those politics to manipulate the economy. They may exert influences experienced by public organisations and on how public procurement managed (Fox et al, 2004:19).

The political environments in which private sector organisations operate or plan to operate will have a significant impact on the suppliers' marketing activities, both domestically and internationally. The overarching procurement practice determined by the government and influenced by its political, economic, cultural, legal, technological, and social environments. Public administration environments can shape and/or harbour the manifestation of unethical procurement practices in the South African public sector. The procurement practice can influence its environment and the government framework. Public-sector administrators should carefully analyse the interaction between procurement policies and those environments in order to maximise efficiency.

2.5.2. Economic environment

The nature, size and extent of unethical procurement practices influenced by the structure of the economic environments. The complete economy comprises many millions of individual economic units such as households, businesses and the departments of national, provincial and local government. Among all their individual decisions, they determine the economy's total spending, its total income, and its total level of production of goods and services (Begg et al, 2011:362). The production of goods and services closely related to the procurement of goods and services, which is central to the study at hand. The economic environment within the confines of public-sector organisations will have a knock-on effect on procurement of goods and services, for example, increasing resistance to procurement fraud and corruption.

Economic conditions have a great influence on the public procurement system's efforts to maximise competition. The government recognises procurement infrastructure as one of the pillars that supports a better life for all as it serves social and economic needs (RSA: National Treasury, 2015d; 13–14; 2017a:11–12).

Public procurement is central to the economic activity of a country as procurement is the interaction between private and public sectors and the community at large. Standard & Poor have downgraded South Africa to junk status. The rating means that the global financial community has lost confidence in the South African economy. To this end, the finance world believes that the government is unlikely to repay its foreign debt. The importance of this is that the downgrade tells foreign investors that our country is at risk and that it would not be wise to invest in South Africa. Less direct foreign investment means that less money flows into the country and fewer jobs created. As a result, there is less money for public spending on activities such as social grants and infrastructure development, low-cost housing, clinics, and schools; and the management of procurement administration adversely influenced.

2.5.3. Legal environment

Van der Walt & Du Toit (1999:384) assert that legal issues include factors such as the constitutional system, the nature of the legal system, legislation, and directives concerning the formation and control of instructions within the state. The constitutional requirements have been emphasised in section 51(1) (a) of the Public Finance Management Act, 1999 (Act 1 of 1999) (RSA, 1999b) (hereafter referred to as the PFMA). An accounting authority for a national or provincial department or public entity must ensure that the particular department or entity maintains an appropriate procurement system, which is fair, equitable, transparent, competitive, and cost-effective (Tucker, (2013) (<http://www.bowman.co.za>). National Treasury, published regulations on how the PFMA implemented through regulations.

The legal environment is another dimension of the external environments closely related to the political system that influences private-sector businesses. The increasing influence of supranational bodies such as the United Nations (UN), World Bank (WB), International Monetary Fund (IMF), World Trade Organisation (WTO), and European Union (EU) in driving legislative or policy at national level will influence the application of the procurement legislation in the South African public sector (Bovaird & Löffler, 2003:18). Procurement legislation needs to comply with international standards to ensure that key internationally recognised public governance values respected. The public procurement framework should promote fair competition and prevent discrimination in public procurement (EBRD, 2010:6–7).

The framework or policy governing public procurement can determine whether the South African public sector is improving the manner in which public administration administered. The public service integrity framework crafted by the PSC covers all aspects of integrity of the public sector. The framework not focused on public procurement practice and not fit for that purpose. The Public Service Integrity Framework as developed by the Department of Public Service and Administration has set up few standards with regard to supply chain management. The public-sector manager made aware of the legal contract and international law.

2.5.4. Social environment

The nature, size and cost of the manifestation of unethical procurement practices can have negative impact on the citizens of the country if not effectively managed. The social environment plays an important role in government activities and administrative processes. Procurement in South Africa channeled to address the previously disadvantaged SMMEs. The SA government has deemed it fit to ensure that the conditions of the local people addressed by eradicating the previously discriminatory practices in public procurement (Van Der Waldt & Du Toit, 1999:379; Bovaird & Löffler, 2003:17; Fox et al, 2004:20).

The Constitution has positioned procurement as a tool used towards the advancement of socio-economic development. Procurement can play a vital role in improving the socio-economic conditions of the citizens if properly administered.

2.5.5. Technological environment

Technology is essential to the modern-day public procurement competition, equity and transparency. Technological advancement is essential to the modern-day developmental state. Technological and scientific development used to manage the procurement process effectively (Van der Waldt & Du Toit, 1999: 332,382; Fox et al, 2004:20). Major procurement innovations can lead to spectacular increases in technological knowledge (Begg et al, 1997:506). The public sector depends on technology to provide greater efficiencies in collecting, validating, processing, analysing, reporting, protecting, data analytics, and storing data (Holzer & Schwester, 2011:380; Crandall, Crandall & Chen, 2010: 233; CIPS, 2012:17; RSA: National Treasury, 2016c). e-Notification should be mandatory for all contracting authorities above the national threshold and voluntary below the national threshold. Through e-procurement, government can be effective and efficient in its operation of or public procurement practices. For example, through e-procurement, government can be efficient in terms of ensuring that tendering processes are transparent to the stakeholders.

2.5.6. International environment

The openness and fairness of procurement procedures for awarding public-sector contracts for goods, services, and works help to create dependable and stable markets for efficient private enterprises. The best practices in international procurement, harmonisation and standardisation cannot be overemphasised. Becq (2006) (<http://www.ippa.ws>) suggests that public procurement is an area where unification of laws is particularly advanced. Put differently, there are various significant international instruments promoting standardisation, which affect different aspects of the procurement contract.

The public administration environments likened to a barometer towards the administration of procurement practices, gauged in the public sector. The public administration environments are important in planning with regard to how procurement procedures can be practices, bidding processes, and conflicts of interest; and utilisation of socio-economic goals as national policies, demand management, and market research. In addition, the environments are important for assisting in planning to manage contracts, conflict resolutions, and enforcements within the public procurement environment.

2.6. Administrative functions

Public administrative functions is an important part that answers two objectives: administration of procurement practices, and framing of a public procurement framework. Public administration as a complex activity viewed as the collective team comprising of six generic processes, namely: policy, organisation, finance, personnel, procedures, and control. These processes are common in any institutionalised frame of reference, be it local, provincial, national or international government and administration (Marume, 2016:1).

The section that follows will analyse the administrative processes applicable within the procurement environment. The important administrative processes in this study relate to policymaking, control, financing, organising, work methods and procedures, personnel, organisation and management functions.

2.6.1. Policy making

In procurement, the function as an activity of public administration, the policy function, and the processes are always predominant. As stated above, Section 217(1) of the Constitution sets out how procurement governed in the South African public sector. The organs of state in the national, provincial or local spheres of government or any other institution identified in the national legislation, when contracting for goods or services

need to so in accordance with a system which is fair, equitable, transparent, competitive, and cost effective. National legislation prescribes a framework within which the organs of state or institutions implementing a procurement policy and providing categories of preference in the allocation of contracts; and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination. The Public Finance Management Act, 1999 (Act 1 of 1999 as amended) (RSA, 1999b), was established in order to give effect to the Constitution and it regulates and secures transparency, accountability, and sound management of revenue, expenditure and liabilities of the institutions.

The amended Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) (PPPFA) (RSA, 2000c) has been aligned with the socio-economic goals laid out by the Constitution regarding Broad-Based Black Economic Empowerment. In order to maximise the chances of a tender being awarded to a supplier, it is vital that business owners pay close attention to their B-BBEE scorecards, as well as the scorecards of their suppliers. Derived from the Preferential Procurement Policy Framework Act and its regulations, preferential procurement is a system whereby government tenders awarded according to a prescribed points system, where preference given to historically disadvantaged individuals. Previously, tenders awarded to the organisation that quoted the best price and were in line with government specifications for the job. Preferential procurement encourages transformation throughout the entire economy, while encouraging procurement of locally produced goods and services.

In terms of the above arrangements, the Preferential Procurement Policy Framework Act of 2000 (RSA, 2000c) stipulates that state tenders be granted to companies that are as BEE compliant as possible. This takes into account the BEE status of suppliers, as well as whether do or not materials sourced locally. When tender bids submitted, companies tendering need to submit a certificate calculated in accordance with a scorecard set out under the Code of Good Practice. The certificate presents the bidding organisation's BEE score, as well as their score out of 10 or 20 depending on the contract value based on the transformation criteria. This amendment to the Act and its accompanying

regulations has taken much subjectivity out of the selection process, and presents a clear yardstick by which all measured. This means that no matter whom the beneficiary and awarded a tender; the greater objectives of B-BBEE being supported.

The Minister of Finance has, in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) (RSA, 2000c), made the regulations contained in the Schedule to the guide. The imperatives relate to preference points system; evaluation of tenders; awarding of tenders not scoring highest points; cancellation and re-invitation of tenders; duty to plan; general conditions; principles; declarations; penalties; tax clearances, and tender goals. Policy decision is imperative to direct the procurement ratings in the South African public sector. Policy is a decision-making framework or course of action to achieve a desired effect or change in the interest of the masses or people in a given country (Palaopa, (2013) (<https://www.slideshare.net>); Kisembo, 2012:2).

Fourie (2015) (<https://www.researchgate.net/publication>) states that policy imperative is essential in an institution. There is relevancy for the formulation of public policy for procurement function as procurement concerns the procurement of goods and services by the public sector. In the South African procurement environment ethical culture and integrity plays a role. The main characteristics of policy, is that it is a declaration of intent to perform an action or actions or to have specific institutions or functionaries undertake an action or actions in prescribed manner (Du Toit & Van der Waldt, 1999:17; Thornhill, 2012:124). The actual formulation of policy involves the identification and analysis of a range of actions that respond to the concerns (Denhardt et al, 2014:52).

The policy is paramount in the administration of procurement practices. The above analyses have demonstrated that the policy intended to set a broad framework for development of such a policy and to enunciate principles for consistency in the administration of procurement practice throughout their lifecycle. The public service managers should take the abovementioned policy as imperative when administering procurement practices.

2.6.2. Organising

Organising consists of classifying and grouping functions well as allocating the groups and functions to institutions and workers in an orderly pattern so that everything the workers do aided at achieving predetermined objectives. The administration of the procurement practices needs an institutional system that can be fit for purpose in terms of being accountable and adding value within the organisational structure of the procurement function (Marume, 2016:2). To make the public procurement system work at all levels, a set of functions performed at the national, provincial and local levels (Bianchi & Guidi, 2010:2).

There are various kinds of structural models, which procurement organisations can use. In the EU existing public procurement structures are separated into three broad groups:

- (i) A *centralised procurement structure* is characterised by a high concentration of procurement functions allocated to a few centrally placed institutions.
- (ii) A *semi-centralised procurement structure* has a mixed concentration of procurement functions allocated to a limited number of institutions placed at various levels within the public administration.
- (iii) A *decentralised procurement structure* is characterised by a dispersed concentration of procurement functions allocated to several institutions placed at various levels within the public administration. It is often comprised of private and public companies.

In South Africa, the general institutional arrangement in terms of the PFMA is that of a decentralised financial management structure. The core financial management function rests with the accounting officer/authority of each organ of state (Quinot, 2014:24). The PFMA is the sole source of legal powers of National Treasury regarding regulation of the procurement function. The PFMA gives the National Treasury general functions and powers of oversight, which also apply to public procurement.

The administration of procurement practices is supported by various oversight bodies, such as the National Prosecuting Authority (NPA); the Public Protector (PP); the Directorate for Priority Crime Investigation (DPCI); and the Asset Forfeiture Unit; the Special Investigating Unit (SIU). In addition, the Financial Intelligence Centre (FIC); the Independent Police Investigative Directorate (IPID); the National Treasury; and the Office of Chief Procurement Officer; the Auditor-General of South Africa (AGSA); Audit committees; and the Public Service Commission are paramount in the administration of procurement practices are such bodies (RSA: National Treasury, 2015d:21–22).

Organising of governance structures is critical for the public procurement environment. Oversight agencies have a key role to play in combating unethical procurement practices in the public sector by detecting and combating corruption. However, governance structures are inadequate in the South African procurement environment. In other countries, governance structures such as the advisory bodies, procurement committees, and the Center-Led Action Network (CLAN) and Matrix structures are part of the procurement environments. The organisation that operates through a number of branches or divisions, perhaps separated by considerable distances, may like to consider CLAN. Contracting authorities using a Matrix model may have some central specialists and some local resources (Firozi, 2013:15; Van Weele, 2005:13–14).

2.6.3. Personnel provision and utilisation

Professional and quality staff is key to the implementation of procurement funding and supply chain management (Thornhill, 2012:227). Highly trained personnel become essential in public institutions, and trained and competent persons are required to deal with highly specialised matters of public procurement (Marume, 2016:2).

The staff assigned for the administration of procurement practices assessed and appraised as prescribed by law. The human resources staff and individual performance management system is a centralised function driven by the Department of Public

Service and Administration (DPSA) and delegated to national departments (RSA: DPSA, 2007a:7).

Chapter 4 of the Handbook describes the process and requirements of performance management and development for members of the Senior Management Services (SMS). Reviews of achievement against departmental strategic objectives and business plans should coincide with individual quarterly performance reviews, to enable individual and organisational performance effectively linked. The mid-term individual performance review should coincide with the annual departmental or unit strategic review. Annual individual performance appraisals linked to and informed by evaluation of unit and organisational performance. The profiles, performance appraisals (Pas) and the outcomes of performance reviews and appraisal must become the basis for staff development plans (RSA: DPSA, 1999c).

Employee Performance Management and Development System (EPMDS) has been designed as a voluntary system to assist with performance management on salary levels 1 to 12 in departments and in provinces that may choose to adopt the system (RSA: CoGTA, 2014b). All employees must also enter into and sign performance agreements before the end of the first quarter of the new cycle. Departmental and component performance measures should inform the development of the individual employee's PA (RSA: DPSA, 2007a).

Performance at the individual level continuously monitored to enable the identification of performance barriers and changes and to address development and improvement needs as they arise. The annual assessment provides the final rating score on which decisions pertaining to career incidents such as pay progression and the possible granting of performance awards based. The assessment instrument used to conduct the performance reviews, as well as the overall annual performance of the employee. The same assessment instrument used for deciding on probation, rewards and skills development. The process commences with a self-assessment by the employee. The supervisor then assesses the employee and reviews the self-assessment.

Each department must establish a Departmental Moderating Committee (DMC), chaired by the Head of Department, Corporate Manager or Chief Financial Officer of the department, or branch heads. The Moderating Committee constituted by the Accounting Officer and senior management, and organised labour consulted in order to obtain their inputs and feedback on the implementation and review of the EPMDs. The role of the DMC is to ensure that monitoring of the performance management process and the annual performance assessment is done in a realistic, consistent and fair manner, by obtaining an overall sense of whether norms and standards are being applied consistently and realistically to employees on the same level (RSA: DPSA, 2007a:12–26).

In South Africa, SCM skill levels and knowledge are lower in the public sector than in the private sector. The public sector does not regard SCM sufficiently as a strategic function. The negative image of public sector SCM makes it difficult to attract the right skills. Institutional cultures need to change in order to attract, develop and retain talent, and offer attractive and appropriate career paths (RSA: National Treasury, 2015d: 52). Skills development and training of procurement professionals is critical. Skills development relates to training plans based on a detailed assessment, analysis, and prioritisation of individual and organisational needs. The analysis of organisational needs relates to such issues as improvement in service delivery and service ethos; the creation of rationalised and cost-effective structures; institution building and management; representivity and affirmative action; and the promotion of greater internal and external accountability. The assessment of individual needs – personal, performance-related and career related – facilitated by the introduction within departments and provincial administrations of a system of personal development plans for all employees (RSA: DPSA, 1997a:3).

Skills programmes in terms of the Skills Development Act, 1998 (Act 97 of 1998) (RSA, 1998c) which are occupationally based need to be developed; when completed, they will constitute a credit towards a qualification registered in terms of the National Qualifications Framework of the South African Qualifications Authority Act, 1995 (Act 58

of 1995). To this end, procurement authorities should develop skills programme complemented by the skills development plans of such authorities.

The staff assigned with the administration of procurement practices assessed and appraised from time to time and on monthly, quarterly and annually to determine whether they are performing according to the set standards. The performance appraisal and management system is just for compliance purposes and does not add any value to the administration of procurement practices. The weakness confirmed by unethical procurement challenges still existing in the procurement environments. Development and delivery of a range of priority training programmes for procurement practitioners, suppliers and professionals remains a challenge.

2.6.4. Financing

The South African government budgets an estimated amount of R500 billion annually for goods, services and infrastructure development (RSA: National Treasury, 2015d: 3). In the South African public sector, national departments implement plans, strategies and actions geared towards the attainment of long-term goals and budget objectives. Financial planning is the identification of long-range goals and the strategies and action plans required to achieve them. The strategic plans, set at a high level, define the general direction in which national departments headed through the Medium Term Expenditure Framework (MTEF). By using the MTEF, the government seeks to focus expenditure on programmes and projects, which are aligned with the policy objectives of government, including those, set out in the National Development Plan and the Medium Term Strategic Framework (MTSF). The budget process is organised to take account of the principle of function budgeting, the constitutionally specified system of intergovernmental fiscal relations, and a consolidated approach to public finance (RSA: National Treasury, 2014i:15).

The Estimates of National Expenditure (ENE) publications provide comprehensive information on how budget resources generated, how institutions have spent their

budgets in previous years, and how institutions plan to spend the resources allocated to them over the MTEF period. Key performance indicators are included for each national government vote and entity showing what the institutions aim to achieve by spending their budget allocations in a particular manner. This information provides Parliament and the public with the necessary tools to hold government accountable against the government outcomes set out in the Medium-Term Strategic Framework (RSA: National Treasury, 2015f). The budget process is broadly comprised of three phases, as follows:

- (i) The first phase is the preparation for the process, which takes place between mid-June and mid-July.
- (ii) The second phase takes place between mid-July and October, where extensive bilateral engagements between institutions and the National Treasury take place.
- (iii) The third phase, which is the finalisation of budget allocations and preparation of the budget, takes place between October and February of each year (RSA: National Treasury, 2014i:16).

National Treasury considers submissions from national departments in support of large infrastructure projects and/or programmes that require budget allocations. All projects go through a series of distinct stages from the initial project idea to the time the project is completed and handed over. The programmes, accorded priority status, put in the Annual Performance Plan and those with low priority planned and categorised as Operational Plans. Strategic plans do not replace project plans or programme and policy plans appropriate to the activities or responsibilities of institutions. The Annual Performance Plans identify the performance indicators and targets that the institution seeks to achieve in the upcoming budget year. The process for the production of the Annual Performance Plans aligned to the budget process. However, the Demand for Procurement Planning not planned during the strategic and annual performance planning stage and not aligned to the 5-year budget METF.

2.6.5. Controlling

Controlling is defined as a measurement of actual performance and expected performance and taking corrective action. Its purpose is to make sure that actual performance is consistent with plans and helps managers to monitor the effectiveness of their planning, their organising, and their directing activities. Measuring performance as a control is the first step in understanding the strengths and weaknesses of any system and taking corrective actions. The procurement can be measured in terms of the efficiency of its procurement process; the openness and transparency of the procurement process; the professionalism of the procurement workforce; contract management and supply performance. Policies and procedures put in place to increase the effectiveness of the procurement process (USAID, 2013:1, 5–27).

Controlling is a process of monitoring performance and taking action to ensure the desired administration of contract management results. Once the administrative processes have run their course, the results of administration, that is, the output or product monitored and evaluated in the light of the formulated objective and policy (Marume, 2016: 3). Controlling function is fundamental in the procurement phases: pre-tendering, tendering, and post-tendering. These are the phases where unethical procurement practices are rife. It is essential that there is accountability in respect of all activities of every public institution (Thornhill, 2012:228). Control exercised to ensure that all administrative and functional functions carried out effectively and efficiently in order to achieve the objectives (Du Toit & Van der Waldt, 1999:15).

Performance monitoring and evaluation of government programmes and projects are key controls over the MTSF. The priorities of departments over the MTSF identified, and five-year strategic objectives are developed and aligned to the government outcomes and relevant sub-outcomes. Departments identify strategic objectives and projects to be included in the Strategic Plan and Annual Performance Plan to support achievement of the identified government outcomes and sub-outcomes. The strategic objectives and projects then translated into targets implemented over MTSF period. The Strategic Plans

and Annual Performance Plans submitted to the Department of Planning, Monitoring and Evaluation for quality checks and controls.

Quarterly reporting and feedback is critical for the leadership of national departments. Quarterly feedback meetings or reporting to determine the performance of national departments are done through the performance information report at Performance Progressing Review Committee for endorsement for submission of the report to the Minister, the Presidency (DPME), National Treasury and Auditor-General's Office. A memo attached as part of the evidence for a particular quarter and submitted to Internal Audit Unit for verification.

Public-sector managers have two broad options with respect to control. They can rely on people to exercise self-control (internal) over their own behaviour. The office of the AGSA and DPSA can act as external controls bodies in terms of performance appraisal systems, compensation and benefit systems, employee discipline systems and supply chain management compliance.

The administration of procurement needs organisational control systems such as management processes; strategy and objectives; policies and procedures; selection and training; performance appraisal; job design and work structures; performance modelling; norms; and organisational culture. These can be critical control systems for administration of procurement practices. Monitoring procurement system performance provides public-sector procurement managers with the information they need to evaluate performance of the effectiveness of the procurement practice.

The public sector has various codes of conducts to guide ethical behaviour in the work place including procurement of goods and services. For example, there are public service regulations, The Public Service Integrity Management Framework covers a small section on the Code of Conduct for Supply Chain Management for practitioners as mechanisms (RSA: DPSA, 2011f:17-18), which while implemented do not yield the desired impact. However, these codes are not effective enough as will be highlighted in

chapter 5 of this thesis regarding the manifestation of unethical procurement practices in the public sector.

2.6.6. Work methods and procedures

The expanding activities in the public service, the mounting stacks of paper, the frenetic advance in technology, and the constant research into the tools of administration require searching inquiry into existing procedures and methods for public institutions (Marume, 2016:3). The public-sector procurement managers should put mechanisms in place to prevent risks to integrity in public procurement. Procurement procedures developed for specific fields of work and often serve as the foundation within the supply chain management units, which determines the manner, and rate at which a service is rendered, or a product supplied, for example, the guidelines on the procurement or tender procedures and contracts (Palaopa, (2013) (<https://www.slideshare.net>)).

Procurement methods and procedures are at the centre of the administration of public procurement practices. The National Treasury provides practice notes, regulations and guidelines regarding the administration of procurement practices. In 2011, the National Treasury issued the Preferential Procurement Regulations, issued in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) (PPPFA) (RSA, 2000c). The National Treasury appealed to organs of the state to read and utilise the guide in conjunction with other relevant SCM-related prescripts, instructions, circulars and guidelines. The guide emphasised the issues of planning, the stipulation of the preference points system to be utilised and the determination of designated sectors; application of pre-qualification criteria; evaluation criteria for measuring functionality; points for each criterion; points for each sub-criterion; minimum qualifying score for functionality; application of preference points system; and identification of applicable preference point system.

In addition, the guide emphasised that organs of state should take into account the broad-based black economic empowerment (B-BBEE) status level certificates; the

validity of B-BBEE status level verification certificates; the verification of B-BBEE levels in respect of EMES; eligibility as qualifying small enterprises (QSE) and local production and content. Additionally, subcontracting as a condition of tender for procurement above R30 million; evaluation of tenders based on functionality as a criterion; evaluation of tenders based on a stipulated minimum threshold for local production and content; evaluation in terms of price and preference points systems forms the guide. Further; criteria for breaking a deadlock in scoring; cancellation of tenders; award of contracts to tenderer not scoring the highest total points; remedies; tax clearance; and bidding documents packaged in the guide (RSA: National Treasury, 2017b:5-24).

Raga (2008:117) posits that government issues guidelines not only as a prescription of standards of behaviour, ethics and accountability, which it requires of its public service. The guidelines also form a statement of the government's commitment to a procurement system, which enables the emergence of sustainable small, medium and micro businesses, which will add to the common wealth, and achievement of enhanced economic and social wellbeing of all South Africans.

However, the administration of procurement practices in the South African public sector and the importance of pledging procurement ethics statements are still lagging behind. The procurement function itself carried out in a cost-effective way and the procurement authority should foster value. Without the procurement ethics statements, the procurement environments are destined for failure. The main idea of adapting guidelines from time to time is to ensure that the guidelines should not be obsolete and become redundant. Further, the standard work procedures believed to engender productivity, effectiveness and efficiency, as well as value for money.

2.6.7. Management functions

Planning is one of the four major functions of management and work towards achieving organisational goals. There are three main types of plans, namely: operational, tactical and strategic. Driven by demand for further control over public spending and more

efficient acquisition processes, procurement has become a key public management function (Holzer & Schwester, 2011:318). The strategic planning sessions of national departments identify strategic objectives according to their mandate and policy imperatives. Planning closely related to decision-making, an aspect of managerial work that cuts across many other areas (Denhardt & Denhardt, 2009:164). Growth and development require a long-term perspective to frame shorter-term trade-offs with regard to goods, services, and works. Many government outcomes can be attained only through the coordinated outputs of different departments across the three spheres as well as other public entities through “joint work” in the form of collaborative programmes, projects and services (RSA: Presidency, 2009b:9–10).

The Executive Authority (EA) identifies the key government priority areas and the priorities on which the department should deliver. In order to give effect to the above arrangements, the strategic planning process by management ensures that the participants in the strategic session include all top management officials of Departments. In the session, the alignment of plans with the National Development Plan (NDP) priorities, the Medium - Term Strategic Framework, Ministers’ Delivery Agreements as agreed to with the President, and the departmental approach would be emphasised.

The EA then assigns or delegates the responsibility for the achievement of departmental goals to the Accounting Officer through the latter's performance agreement. The Accounting Officer is responsible for the development of the medium term strategic priorities of the department by means of the medium-term strategic plan translated annually into operational or business plans. The Accounting Officer is also responsible for ensuring that components assigned specific responsibilities drawn from the department’s strategic and annual business plans.

The Branch Managers and other delegated senior managers are responsible for developing the branch or component’s business plans that derive from the departmental strategic and business plans. They are also responsible for determining the KRAs for the Component Managers, based on those indicated in branch objectives, and for

supervising Component Managers' performance agreements. The Component Manager is responsible for the component objectives and for ensuring that sub-components develop business plans based on the objectives by defining objectives, outputs, targets and staff to carry the responsibility and the budget to fund the activity (RSA: DTA, 2014h).

In government, Programmes and sub-Programmes form part of the strategic planning document. The strategic planning document also considers resource allocation in terms of the programme budget allocation. The expenditure classified according to economic indicators. Goods and services line item with budget through the MTEF classified in the template, and the amounts filtered. Arguably, operational plans sit at the bottom of the totem pole; they are the plans that are made by frontline, or low-level, managers.

Directing and coordination of programmes and projects is at the heart of management process and recognising the importance of integrity for leadership (Bauld & McGuinness, 2010:8) should do good governance and trust in public institutions, performance per programme and sub-programmes arranged. The total number of targets for a particular quarter reflected as achieved, either partially achieved, or not achieved. The actual performance and reasons for deviation reflected in the report.

It can be argued that, coordinating and oversight of the administration of procurement practices and activities institutionally is a central managerial function. As a management function, public procurement directed effectively and efficiently for allocated resources. Financing of government programmes, staff planning, and utilisation of professional and quality skills, as well as provision of effective work methods, are critical in public procurement organisations.

2.7. Conclusion

The objective of this chapter was to conceptualise the public administration environment. The chapter gave an overview in addressing the general question on which the

administration of procurement practices anchored, namely: value for money, ethics, competition, transparency, and accountability in the South African public sector. The study has demonstrated that theories of public administration provided an historical outline in terms of the development of Public Administration. The theories demonstrated issues relevant to the administration of public procurement practice such as conflict of interests, leadership, governance, professionalism, efficiency and effectiveness.

The elements of the environment of public administration demonstrated pertinent issues with regard to the influence, which they may have on the administration of procurement practices. The principles of Public Administration provided the founding values and morals in terms of which administration of procurement practice practised. The political environment is a core element of globalised public-sector procurement. The political environments in which private sector organisations operate or plan to operate will have a significant impact on the suppliers' marketing activities, both domestically and internationally.

The nature, size and extent of unethical procurement practices influenced by the structure of the economic environments. Public procurement is central to the economic activity of a country as procurement is the interaction between private and public sectors and the community at large. The legal environment is another dimension of the external environments closely related to the political system that influences private-sector businesses. The nature, size and cost of the manifestation of unethical procurement practices can have negative impact on the citizens of the country if not effectively managed. Technology is essential to the modern-day public procurement competition, equity and transparency. The best practices in international procurement, harmonisation and standardisation are paramount for public procurement as an area where unification of laws is particularly advanced.

The organisation of procurement environment is key in the public sector and as such, the institutional system should be fit for purpose and accountable. Professional and quality staff is key is the procurement environment. Staff utilisation is important and

therefore, the staff assigned with the administration of procurement practices assessed and appraised on monthly, quarterly and annually basis. The public-sector mechanisms in the form of work methods and procedures are inadequately put in place to prevent risks of unethical practices in public procurement. The Public Service Integrity Management Framework covers a small section on the Code of Conduct for Supply Chain Management for practitioners. The Integrity Management Framework inadequately focuses on efficiency, effectiveness, integrity, impartiality and conflict of interest and complying with a code of Conduct for the Public Service relating to Chapter 2 of the Public service Regulations.

The role of management in terms of strategic planning of programmes and projects and operational plans oversight is paramount. The study demonstrated the importance of administrative functions regarding policy determination and formulation pertaining to procurement legislation, institutional arrangements, financing procedures and processes, and controlling and management functions. The study has demonstrated key issues in the administration of procurement practices within the administrative functions continuum. Policy making in the form of national procurement legislation is paramount when contracting for goods or services and need to be implemented need accordance in terms of the system, which is fair, equitable, transparent, competitive, and cost effective.

The strategic plans, set at a high level, define the general direction in which national departments headed through the Medium - Term Expenditure Framework (MTEF) and planned for in public procurement. The study also demonstrated that the budget needs allocated for programmes and projects for goods, services, and works through strategic planning. The utilisation and provision of professional staff to monitor performance of procurement practices is imperative.

Chapter 3 will focus on the international public-sector procurement perspective. A synopsis of public procurement case studies regarding China, Germany, Finland and Brazil will be central to Chapter 3 in order to gain an understanding as to which best practice can be replicated in South Africa.

CHAPTER 3: PUBLIC SECTOR PROCUREMENT: AN INTERNATIONAL PERSPECTIVE

3.1. Introduction

The previous chapter focused on the conceptualisation of public administration. Various elements such as political, economic, legal, social, technological and international aspects of public administration environments were analysed. The administrative functions as they relate to policymaking, financing, organising, personnel utilisation, work methods and procedures, controlling, and management functions were central to the chapter.

In this chapter, international public-sector procurement, the first objective of the study on the administration of public procurement practices, is analysed, and sets up a precursor to chapter 4. The administration of procurement practice domestically and internationally should be guided by procurement regulation, a capacitated institution, or a procurement authority in terms of warm bodies, professionalised bidding committees, and effective procedures in terms which are competitive, open tendering, restricted tendering, and a request for quotation practice. The bidding processes of needs assessment, specification, tender evaluation, award and contract management, monitoring and evaluation, audits, and evaluation must be fit for purpose in the administration of procurement practice.

International procurement means enabling access to foreign procurement markets, which are highly significant from both the economic and the political state of affairs. Public procurement issues and regulations typically represent the means by which government can carry out its public services; whereas for the private sector, public procurement is a route to the sale of goods, and construction and other services to the biggest and most important clients in governments around the world.

In this chapter, the study zooms in on different regions and analyses the cases of China, Germany, Finland, and Brazil, relating to procurement legislative and institutional frameworks, procedures, processes, and remedies or enforcements. The case selection motivated by the following considerations of the corruption perception indices of those countries. Looking at these four cases in a comparative perspective allows the study to explore whether the procurement regulation influences policy-orientated learning for the South African public sector. In examining the four countries, the interest focused on the following questions: Are the selected countries' procurement regulations, institutional arrangements, procurement procedures, and bidding processes the same as those of the South African public sector? If yes, are the outcomes similar or different? We also have to ask, "Which policy-orientated learning areas can be forthcoming from the study?"

3.2. Overview of international public procurement practices

Governments globally have to harmonise the procurement procedures and standards by working together in a collaborated effort. The Government Procurement Agreement (GPA) is a plurilateral agreement between World Trade Organisation (WTO) member countries who agree to open up their non-defense public procurement markets to each other. Suppliers of each GPA member country can participate in the public procurement bids of other GPA member countries should not be discriminated than local bidders in the award of government contracts (Malolitneva, 2014:53; Fuguo, Wang & Liaohai, 2011:11).

The United Nations Commission on International Trade Law (UNCITRAL) was established and adopted by the United Nations General Assembly in its Resolution 2205 (XXI) of December 1966. In 1994, UNCITRAL issued its Model Law on Procurement of Goods, Construction and Services, together with a Guide to Enactment that explains the rationale for its provisions to legislators and other policy formulators. The UNCITRAL Model Law as Framework law recommends open bidding as the method of procurement that is generally most effective in promoting competition, economy, and efficiency in

procurement. The Model Law on Public Procurement has become an important international benchmark in procurement law reform (Schiavo-Campo & McFerson, 2008:254; Garcia, 2009:20–24), subsequently been superseded by the UNCITRAL Model Law on Public Procurement (2011).

The legal and regulatory procurement frameworks of countries are important instruments to guide the administration of public procurement practices in the public sector. In order for the procurement practice administered effectively, apply principles of good governance, governments nationally, and internationally have to endorse a legal and regulatory procurement framework in the national environment.

It is emerging internationally that the notions of value for money, transparency, and competition are principles taking the center stage in public finance and procurement practices. In order to achieve these, a sound public procurement practice needs to have good procurement laws, regulations, procedures, and remedies or enforcements which clearly cover the whole scope of public procurement, at all stages of the procurement processes, methods of procurement, ethics, and transparency (Schiavo-Campo & McFerson, 2008:254).

The administration of public procurement practices aligned to procurement manuals that guide public procurement practices. Different countries allow different degrees of departmental discretion in devising the administrative procurement procedures laid down by the Ministry of Finance. In South Africa, for example, the National Treasury issues practice notes and regulations to guide the administration of procurement practices in the public-sector.

Public procurement organisational structure should be equipped with sound infrastructure to administer procurement practices effectively (Thai, 2009:10). A quality workforce is an important ingredient for the success of the procurement environment. A high quality, competent and professional workforce equipped with defined skills and

knowledge for specified procurement jobs is extremely valuable to sound procurement practice (Government Accountability Office, 2006:31).

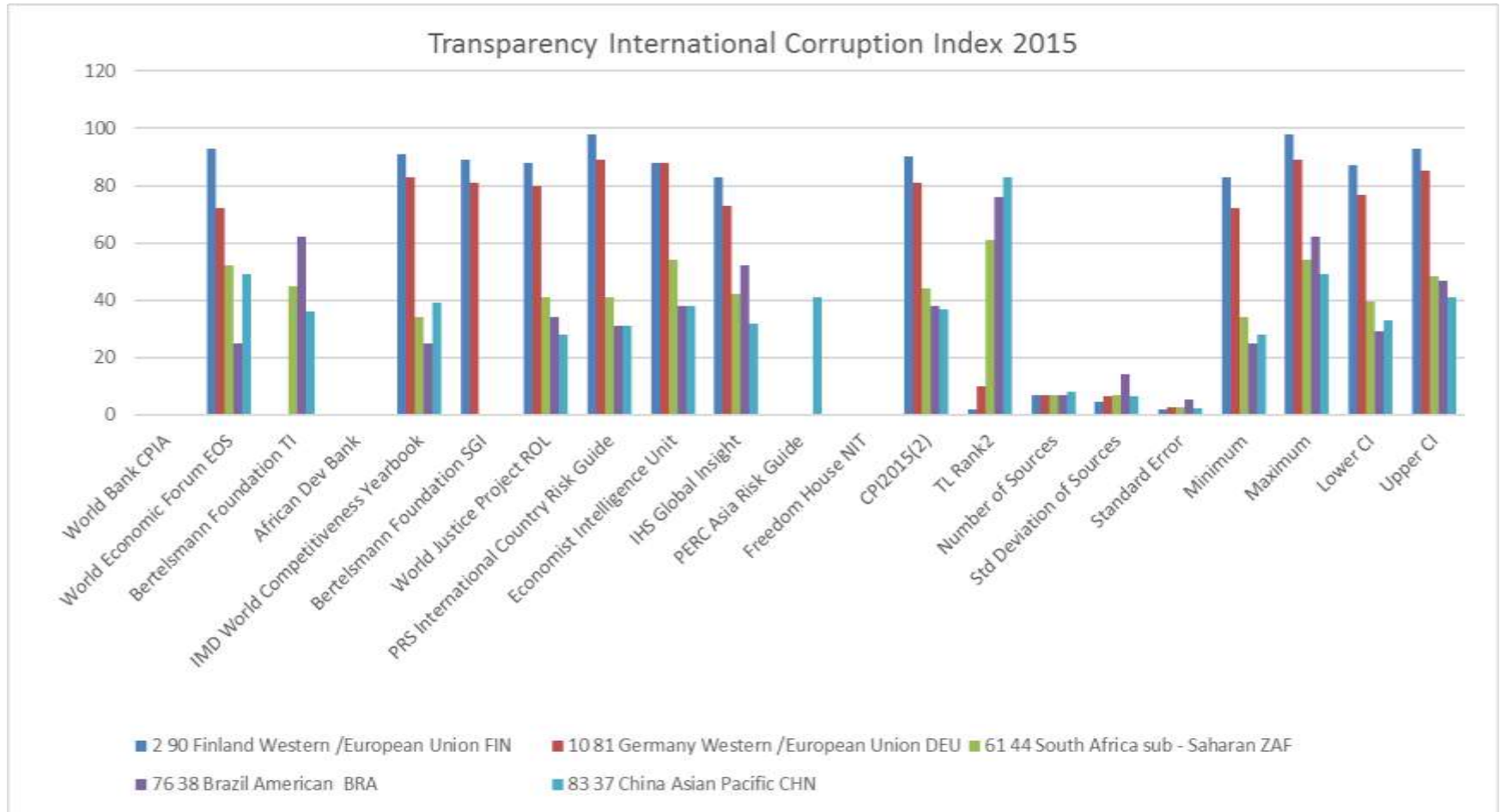
Procurement can either be organised centrally or decentralised. Although centralisation is good, however, not be regarded, as a panacea for all ills, there has been some evidence that central procurement agencies may be a way to overcome attitudes hampering the procurement of the administration of procurement practices (Edler, Rigby, Hommen & Tsipouri, 2015).

The organisation of the procurement environment through centralisation or decentralisation depending should be underpinned organisational arrangements the country wants to adopt and follow. Public procurement in the South African public sector is still young; it has been in existence only since the dawn of democracy in 1994. South Africa will draw pertinent lessons from the case study countries in terms of how the procurement regulations, institutional organisations, procedures, processes, and remedies are practised.

3.3. Case studies: International public procurement

The case studies present an analysis of the procurement practices of four countries. The study includes countries of Asia and the Pacific (China), Europe (Germany and Finland) and South America (Brazil). The Transparency International Corruption Index for the five countries illustrated in terms of Figure 3-1, below. The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector perceived to be. A country or territory's score indicates the perceived level of public-sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). The Corruption Perceptions Index measures the perceived levels of public-sector corruption worldwide.

Figure 3-1: Transparency International Corruption Index 2015



Source: Adapted from Transparency International Corruption Perceptions Index 2015

There are various sources, used to compile the Corruption Perceptions Index. The sources used drawn from Country Policy and Institutional Assessment (CPIA); World Economic Forum Executive Opinion Survey (EOS); Bertelsmann Foundation Transformation Index (TI); International Institute for Management Development (IIMD) World Competitiveness Yearbook; and Bertelsmann Foundation Sustainable Governance Indicators (SGI). In addition, from the World Justice Project Rule of Law (ROL); Political Risk Services (PRS); International Country Risk Guide; Economist Intelligence Unit; IHS Global Insight; Political & Economic Risk Consultancy (PERC); Asia Risk Guide; and Freedom House's Nation in Transit (NIT).

Transparency International gathers all the data and then consolidates it in order to rank the countries' effectiveness. A first CPI ranking compiled, and a final ranking done using standard deviation designed for the purpose. In these case studies, countries ranked as follows: Finland ranked at number 1 with a score of 90; Germany ranked at number 10 with 81; South Africa ranked 66th with 44; Brazil ranked 76th with 38; while China ranked 83rd with 37.

3.3.1. Public procurement practice: China

The next section will analyse the procurement practice in China. The study will focus on the Procurement Corruption Index, regulations, and institutional arrangement and procurement procedures.

3.3.1.1. Corruption perceptions index: China

Transparency International reported that China scored 37 points out of 100 on the 2015 Corruption Perceptions Index. China has averaged 33.70 points on the Corruption Index from 1995 to 2015, reaching an all-time high of 40 points in 2013 and a record low of 21.60 points in 1995.

China offers a comprehensive legal framework in both the public and private sectors by criminalising several corrupt practices such as facilitation payments, money laundering, active and passive bribery, and gifts; and the legislation is enforced in line with the anti-corruption campaign. In addition, anti-bribery laws target corporate and individual offenders. Punitive measures range from fines to capital punishment, depending on the severity of the case (GAN Integrity Solutions, (2015) (<http://www.business-anti-corruption.com>)).

3.3.1.2. Procurement procedures: China

Chinese public procurement system established recently yet has developed quite fast. China has gained experience in the most rewarding way such as public bidding and contractual pricing already used internationally. In order to guarantee the fairness and efficiency of the legislative requirements, institutional requirements, procurement procedure and remedies and enforcement, the country has reformed its public procurement since 1996 through the pilot project launching, universalisation and legislation (Lember, Kattel & Kalvet, 2014: 92–93).

In 1999 and 2002, China enacted two primary sets of laws governing government procurement namely: the Bidding Law (BL) and the Government Procurement Law (GPL) (Fuguo et al, 2011:6). The Bidding Law (BL) initiated by the National Development and Reform Commission (NDRC) in 1999. The two laws supplemented by various implementing measures issued by different government agencies (Garcia, 2009:192–193; Thai, 2009:325). The Government Procurement Law (GPL) promulgated on 1 January 2003 and administered by the Ministry of Finance (MOF).

In terms of Article 3 of the Government Procurement Law of the People's Republic of China (Order of the President No. 68), construction projects relating to surveying and investigation, design, construction and supervision of such construction projects as well as the procurement of relevant major equipment and materials are to be carried out through tendering procedures. The projects relate to the following:

- (i) Large-scale infrastructure projects and public utility projects concerning public interests and public security;
- (ii) Projects invested completely or partly by the government or funded through state financing; and
- (iii) Projects using loans and aid funds from international organisations or foreign governments.

The specific scope and threshold for tendering of the projects formulated by the development planning commission of the State Council, together with other State Council departments must be reported to the State Council for approval. The BL covers all tenders by State Owned Enterprises (SOEs). The majority of procuring entities under the BL are SOEs, essentially economic operators owned and controlled by the government. Many industries have additional regulations for tendering that also affect the Chinese overall public procurement (GPL and BL) environment (EU, 2012:61).

The GPL defines government procurement as procurement of goods, works and services conducted with fiscal funds by state organs at all levels, public institutions, and social organisations (Xijin & Ming, 2009:15). The GPL applies to all purchases by central and sub-central government, but does not apply to projects undertaken by State Owned Enterprises (SOEs) using public funds, or to public goods provided by SOEs such as energy supply or infrastructure projects (Fuguo et al, 2011:8, 11, 13, 23; EU, 2012:62). The reason for the two-dimensional legal framework with BL and GPL operating in parallel and sometimes in conflict is arguably the fragmented institutional framework (Wang, 2011:17). The legal framework demonstrates that there are numerous state and local organs involved in regulating public procurement.

The development and reform department of the State Council guides and supervises the bidding work across the country in relation to the inspection of the bidding activities for the state's major construction projects (UNCTAD, 2012:6). The BL recognises the key role played by the National Development and Reform Committee

(NDRC) in formulating bidding policy. The BL allows line ministries to supervise bidding activities in line with their administrative functions (Thai, 2009:345; Fuguo et al, 2011:21). Under the BL, a procuring entity may choose to conduct the procurement itself or authorise a bidding agency to conduct the proposed procurement. When procurement reform initiated, a centralised procurement system was preferred as a part of common practice, and a Central Procurement (CP) catalogue (the CP-Catalogue) established to define the scope of centralised procurement.

The GPL requires that government procurement conducted in a combination of centralised and decentralised fashion. The law also provides that government above the provincial level should have the freedom to establish a central agency (Wang & Zhang, 2010:46). China has a range of modern procurement methods provided by the GPL namely: open tendering; selective tendering; competitive negotiation; single source procurement; and request for quotation or other methods approved by the MOF (Wang & Zhang, 2010:51). The BL recognises two procedures, open bidding and selective bidding, while the negotiated procedure is not used. The two adopted procedures are similar except that under the selective procedure, no public procurement notice is required, and bidders invited directly. The GPL promotes open tendering as the preferred procurement method, provides conditions for the use of each procurement procedure, and requires prior approval from supervising authorities (Thai, 2009:334–338; Lember et al, 2014:99).

Bidding publicly or open bidding refers to a procurement procedure where “the procuring entity invites, through bid notice, unspecified legal persons or other organisations to submit bids”. While, selective tendering refers to bidding procedures under which “the procuring entity invites, through an invitation letter, specified legal persons or other organisations to submit bids” (Wang & Zhang, 2010:51).

The Bid Adjudication Committee is comprised of experts with eight years’ professional experience all of whom have senior professional titles. The experts

generally chosen from extensive databases provided by bidding agencies. The experts also chosen from lists of experts provided by the relevant departments under the State Council or lists provided by the provincial or municipal governments (People's Republic of China, 2000).

Chinese procurement practice allows pre-qualification of bidders. A common principle followed by both the BL and the GPL regarding the qualification of potential bidders or suppliers is the prohibition of discriminatory or preferential treatment among potential bidders or suppliers based on "unreasonable" terms of the BL and GPL. Issues such as the supplier's commercial reputation, financial and accounting system, professional expertise, possession of equipment required to perform the contract, a clean tax record and social security record, as well as a clean legal record for the preceding three years are taken into account (Wang and Zhang, 2010:50).

The bid notice is important in the Chinese bidding processes. The bid announcement will be published once the procuring entity's needs identified and the project approved. Under the GPL, companies have 20 days after the tender announcement to submit their bid (Fuguo et al, 2011:23; People's Republic of China, 2000, Article 29; Thai, 2009:339). Prior to the deadline for submission of bid documents set in the tender documents, a bidder may supplement, modify or withdraw his bid documents already delivered and shall notify the tenderer in writing (People's Republic of China, 2000).

The BL requires the publication of a solicitation notice when using the open bidding method. The notice published in the media designated by the state. Opening of bids carried out openly at the same time as the deadline for submission of bid documents stipulated in the tender documents; and the place of opening of bids should be the one predetermined in the tender documents (Wang and Zhang, 2010:78).

Chinese procurement practice uses the central procurement catalogue to list goods and services procured. Central and sub-central government can procure only goods

or services listed in the Central Procurement Catalogue (Fuguo et al, 2011:20). e-Procurement is taken into account in the Chinese procurement procedure, as China is well advanced in the electronic communication of procurement documents such as contract notices, contract award decisions, and results of bid challenges (Thai, 2009:340; Wang, 2011:25, 28).

Consultants are important in providing support services to the procurement authorities in China. Under the BL, procuring entities frequently engage bidding agencies to support the bidding process, and the bidding agencies selected by tender. Once selected, the bidding agency will act as the secretariat for the project bid process. The bidding agency will carry out all necessary communications with potential suppliers and will provide the administrative and logistic support necessary to carry out the bidding process. The consultation process should be an open one (Fuguo et al, 2011:23).

The Bid Evaluation Committee established by the tenderer according to law is responsible for the evaluation of bids. The bid evaluation committee for a project subject to tender by law made up of representatives of the tenderer as well as experts in the relevant technological, economic and other fields (People's Republic of China, 2000, Article 37). The evaluation and award of the bid in terms of the BL take into account that the successful tenderer should bid with the lowest price subject to satisfying all substantive requirements provided in the solicitation document (hereafter referred to as the lowest bid price). This method generally used in the procurement of standard goods, or commodities and common services (Wang & Zhang, 2010:73).

The comprehensive evaluation method allows for comprehensive factors specified in the bidding document taken into consideration in the bid evaluation. Such factors include price; technology; financial situation; reputation; experience; after-sales service; and the degree of responsiveness to the bidding document, and are quantified and weighted. The successful bid will be the one with the highest evaluated

scores subject to satisfying all substantive requirements. Once the evaluation process is completed, the winning bidder receives a 'Notification of Award' and the contract negotiations with the end-user commence. In China, one of the practical issues of the bidding process concerns the termination of the bidding activities. Procuring entities permitted to cancel the bidding process once the bid notice, bid invitation letter and solicitation document issued (Articles 24 and 36 of the GPL). However, there are conditions to such a decision.

National policy imperatives are important in the Chinese public procurement regulations. China's public procurement market is huge, and laws, regulations and policies favouring domestic over foreign goods and services restrict the access to it. For example, the "buy national" policy first appeared in MOF rules, and confirmed by the GPL. Article 10 of the GPL provides that domestic goods, construction and services for government procurement, at times with conditions (Wang & Zhang, 2010:55, 98). Government entities are required to procure domestic goods subject to rare exceptions: when the goods are unavailable in China or, if available, cannot be procured on reasonable commercial terms, the domestic equivalent must be 20 % more expensive) -or are for use outside China.

The remedies and enforcements considered China's procurement environment. The enforcement of the public procurement rules in China relies heavily on administrative supervision. A complaint can be made in relation to any phase of the bidding activities including the bid invitation, submission of bids, opening of bids, evaluation of bids, determination of the successful bid, and conclusion of the contract (Wang & Zhang, 2010:57). Under Article 65 of the BL, a bidder or any other interested person has the right to challenge the decision of the procuring entity or to complain to the relevant administrative supervision department, if he/she believes there has been a violation. A complainant's preferred remedy will usually be the rectification of the breach by the procuring entity. The BL relies heavily on administrative sanctions for enforcement. The GPL and relevant implementing rules provide administrative and criminal penalties for the conduct of the implementing rules.

Chinese procurement administration practices are undergoing reform. China is not a member of the WTO GPA and UNCITRAL Model Law on Public Procurement. Two national laws on bidding activities and government procurement have addressed aspects of public procurement. The Bidding Law (2000) and the Government Procurement Law (2003), together with other Ministerial and local legislation, used in China. It has emerged that procurement is a new phenomenon in China and the legislative government procurement framework is now taking shape. Mainly administrative organs have driven the public procurement regimen in a piecemeal arrangement.

3.3.2. Procurement practice: Germany

The analyses of the Germany procurement regulation will focus on the background information as it relates to economic freedom and the corruption perceptions index. The procurement regulation preceded an analysis on legislative requirements, institutional framework, and procurement procedures, bidding processes, remedies and enforcements.

3.3.2.1. Corruption perceptions index: Germany

Germany scored 81 points out of 100 on the 2015 Corruption Perceptions Index reported by Transparency International. The Corruption Index in Germany averaged 79.16 Points from 1995 until 2015, reaching an all-time high of 82.70 points in 1996 and a record low of 73 points in 2002. Corruption is not an obstacle for businesses in Germany, and companies are unlikely to encounter bribery or other corrupt practices. Germany has a strong anti-corruption system relying on adequate administrative capacity in the form of institutional and legal frameworks, effective oversight mechanisms, and law enforcement. Companies can be held civilly liable under the Administrative Offences Act, with fines up to €10 million and confiscation of all economic advantages obtained through bribery (EU, 2016:86–87; GAN Integrity Solutions, (2015) (<http://www.business-anti-corruption.com>)).

3.3.2.2. Procurement procedure: Germany

In Germany, the EU Public Procurement Directives regulate the publication and organisation of tender procedures for contracts with an expected value above designated thresholds. Public procurement law subsumes a multitude of national and international laws and regulations as well as a variety of regional rules and agreements. Public procurement rules also apply where public authorities (Davey & Gatenby, 2016:128) (indirectly) finance the contracting authority.

German public procurement law consists of a multi-layered structure of legal rules (Burgi, 2012:1). Public procurement is regulated at national as well as at subnational level in terms of the competition law. At national level, the Anti-Trust Law (Gesetz gegen Wettbewerbsbeschränkungen, GWB) regulates public purchasing. At the Federal level as well as in some States, statutory decrees therefore regulate public purchasing or specific aspects even further. At subnational level, the Federal States (Länder) are also entitled to adopt Federal State laws on public procurement (Sarter, Sack & Fuchs, 2014(<http://www.unibielefeld.de>); Davey & Gatenby, 2016:126-127; Burgi, 2012:4; Muller, 2011:6, 10; Global Legal Group (GLG), 2016:104).

German Government Procurement Regulations and Practice governed by the GWB against restraints of competition. German anti-trust law defines the notion of public buyers. Public buyers have to comply with the regulations of German public procurement law, influenced by international and European law (Thai, 2009:310; Chamberland & Ling, 2012:131). The VgV or Award Regulations and SektVO-award and Procedural Regulations for Entities are the other laws. The VgV is a set of Principle Award Regulations which consists of VOB/A, or Regulation of construction services/works; VOL/A, or Regulation of public supplies, goods and services; and VOF, or Regulation of Professional services (Muller, 2011:10–11; Brakalova, 2016:104; Garcia, 2009:232; EC, 2016:83–84; Burgi, 2012:4–5; Chamberland & Ling, 2012:129).

The main institution responsible for public procurement policy is the Federal Ministry of Economy and Energy (BMWi), as it decides on the principles of public procurement and drafts primary legislation. In the area of public works procurement, the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB) is the institution in charge. Germany has four central purchasing bodies at the federal level, which are thematically specialised. The Federal Financial Directorate Southwest (BFD Südwest) procures for the tax administration. The Federal Institute for Materials Research and Testing concludes framework agreements for specific technical product groups. The Federal Office for Equipment, IT Technology, and Use of the German Armed Forces are mainly responsible for procurement for the German military. Lastly, the Central Purchasing Body of the Ministry of the Interior plays the most important role as it procures for all federal agencies, manages the main e-procurement platform, and carries out other supportive functions (EC, 2016:84).

A unique element of Germany's public procurement institutional set-up is the Public Procurement Committees. These bodies are a forum for stakeholders from federal, federal state and local administrations, public-private organisations such as Chambers of Industry and Commerce, and the private sector. They contribute to the drafting of procurement rules taking into account private and public sector needs. The German Committee for Supplies and Services Tendering and Contract Regulations (DVAL) works on procurement rules for supplies, services, while the German Committee for Construction Tendering and Contract Regulations (DVA) contributes to procurement rules for public works. Germany has a well-developed system of support to tenderers that comprises dedicated advisory structures and training institutions. Notably, contracting authorities frequently collaborate with local and regional Chambers of Commerce via so-called Procurement Advisory (EC, 2016:86).

German public procurement law provides for four different tender procedures to award a European public contract (public contract reaching or exceeding an applicable EU threshold), namely; open procedure, restricted procedure, negotiated

procedure, and competitive dialogue (not applicable under the SektVO). The tender procedure ends with the award, usually won by the most economically advantageous tender. As a rule, the open procedure has priority over the other procedures. The other procurement procedures chosen only by the contracting entity under the specific requirements outlined in the procurement regulations. However, for contracts awarded under the SektVO, this priority of the open procedure is not applicable. The SektVO provides for a free choice among the procedures. In contrast, contracting entities awarding public contracts under the VSVgV permitted to use the open procedure (Brakalova, 2016:106–107). The minimum term for submitting a tender is 52 days after the tender notice sent to the OJ (Official Journal of the European Union). The minimum period is 15 days if certain preconditions met (Global Legal Group (GLG), 2016:107; Davey & Gatenby, 2016; Muller, 2011:15–20; Burgi, 2012:7).

The public procurement process used in Germany begins with the identification and specification of needs and ends with the payment. The process is composed of four sub-processes: demand management, market research, awarding contracts, and execution. Demand management and market research are important in determining the needs in the procurement processes. Demand management marks the beginning of public procurement processes. Market research includes systematical research, collection, and preparation of all current and prospective information connected with the markets (Thai, 2009: 313, 316).

Public notices of procurement information are necessary to foster transparency. At the beginning of the open procedure, all the information and the announcements published in newspapers, official bulletins, or journals, and depending on the order value, the announcement published in the *Official Bulletin* of the European Union. Using the method of restricted or negotiated procedure, the public buyer has to collect information about the circle of bidders when he lacks knowledge about the market structure (Muller, 2011:23).

The German procurement practices recognise bid qualifications. The criteria to qualify for bidding are equivalent to European directive standards. In accordance with Article 122 of the GWB, bidders must prove their suitability to pursue the professional activity, their economic and financial standing, and their technical and professional ability.

The bid evaluation and awards of contracts within the German procurement practices involve the valuation criteria, publication of notices, the national policy imperatives, e-procurement, foreign suppliers, joint ventures, and framework agreements. Public contracts awarded to bidders who are suitable with regard to the subject of the contract. A bidder considered suitable if he/she is reliable and if he/she possesses technical and financial ability. In the open procedure, the evaluation of suitability followed by the evaluation of the fulfilment of the award criteria. In the procedures of two or more stages, only a limited number of suitable undertakings selected to submit a tender; accordingly, only these tenders evaluated with regard to the award criteria.

Award procedures won by the most economically advantageous tender. The price is not the only decisive criterion; other order-related criteria such as quality, aesthetics, operating costs and time schedule for the awarded project chosen by the contracting entity (Brakalova, 2016:107). Contracts awarded to economic operators who are suitable with regard to the subject of the contract. A bidder or an applicant respectively is suitable if he possesses technical knowledge, efficiency and reliability. The bidder's enterprise has to ensure adequate staffing, technology, and financial situation, so that the contractual duties fulfilled. Unsuccessful bidders provided with an advance notification of the intended award (Chamberland & Ling, 2012:133, 137; Muller, 2011:23, 25–29).

The national policy imperatives are viewed an important element when bids are awarded. Aiming to promote small and medium-sized companies, German procurement law emphasises that groupings of candidates and tenderers treated equally to individual competitors. Germany's public procurement system recognised

as an efficient instrument to attain the objectives of the single Market and the political objectives. For example, socio-economic goals with regard to SME and sustainability requirements towards fulfilling the Europe 2020 Agenda are considered (EC, 2016:86–87)

e-Procurement is put highest of the German procurement practices. e-Procurement policy is largely defined by the Ministry of the Interior as part of the digitalisation of government programme, 'Digital Administration 2020'. Though fragmented, the German e-procurement system relatively advanced, particularly at the federal level. e-Notification is mandatory at federal level and in some federal states. Federal agencies are required to publish their calls for tenders on the federal portal, which is also available to regional and municipal authorities on a voluntary basis (Sarter, Fuchs & Sack, 2014(<http://www.uni-bielefeld.de/>)).

Foreign suppliers can participate in bidding for goods and services or construction work. Contracting authorities and entities can accept bids from foreign suppliers provided they comply with the qualification criteria. Contracting authorities and entities may conclude framework agreements in terms of the European directives. According to the new legislation, framework agreements concluded for all types of works and services. Where public contracts awarded in such structures, contracting authorities must choose their partner by way of a regular procurement procedure. The joint venture recognised in Germany. However, the joint venture itself must comply with the procurement law if it is to be qualified as a contracting authority or entity (Burgi, 2012:7–8; Brakalova, 2016:108).

The German procurement procedures take remedies and enforcements as paramount instruments in the administration of procurement practices. Zubcic and Sims (2011) in Tukamuhabwa (2012:36) view enforcement as having a positive effect on public procurement compliance because it could be broadly considered as any actions taken by regulators to ensure compliance (Chamberland & Ling, 2012:134–135). Full legal protection granted only for public contracts reaching or

exceeding the applicable EU threshold. The public procurement tribunal decides whether the applicant's rights violated, and takes suitable measures to remedy a violation of rights, and to prevent any impairment of the interests affected. The public procurement tribunal is not bound by the applications. The public procurement tribunal independently investigate the lawfulness of the tender procedure. Decisions made by the public procurement tribunals can be challenged by filing an immediate complaint (sofortige Beschwerde) with the Higher Regional Court (Oberlandesgericht-OLG) within two weeks (Brakalova, 2016:108).

Candidates and bidders can challenge procurement procedures only if they can invoke the violation of regulations on the award of public contracts that are there to protect their rights. The undertaking must demonstrate their interest in the contract, a non-compliance with the relevant rules, and that the violation prejudices its expectations awarded the contract. A bidder excluded if the tender contains formal errors, e.g. late submission or changes to the tender documentation. A bidder can also be excluded if, for example, bankruptcy proceedings have been initiated against his/her assets or if he/she has not met his/her obligation to make due payments of taxes and contributions to statutory national insurance or because he/she does not have the required technical or financial ability (Muller, 2011:22).

In Germany, before initiating a review procedure, the bidder must have notified the alleged violation to the contracting authority or entity by way of an objection. Candidates and bidders are obliged to object to potential violations of the procurement rules within 10 days of their becoming aware of that violation. The Judicial Review Chambers work and decide independently. A petition for judicial review filed with a Judicial Review Chamber suspends the award procedure. The award of the contract banned as soon as the petition for judicial review served on the contracting authority (Chamberland & Ling, 2012:139–141; ITECHLAW, (2012) (www.harlaylaw.com); Garcia, 2009:231; Thai, 2009:307).

The study has demonstrated that Germany has a well-established public procurement infrastructure in terms of the procurement legislation, which enables it to have oversight advisory units. A unique element of the study has demonstrated that Germany's public procurement institutional set-up is unique in that it has Public Procurement Committees which are a forum for stakeholders from federal, federal state, and local administrations, public-private organisations such as Chambers of Industry and Commerce, and the private sector with specific responsibilities. South Africa can learn from such a set-up. Germany's review system introduced by the EU Remedies Directive considered a strength of the procurement system.

3.3.3. Public procurement practice: Finland

In the section that follows, the discussion on Finland Public Procurement (FPP) practices will focus attention on the Corruption Perceptions Index, the procurement legal system and institutional system. In addition, the study will also focus on the procurement procedures, and bidding processes underpinning public procurement in that environment.

3.3.3.1. Corruption perceptions index: Finland

The quality of the judiciary is generally high, and corruption is not a significant problem in Finland, ranked second out of 168 countries surveyed in Transparency International's 2015 Corruption Perceptions Index. According to Transparency International, Finland scored 90 points out of 100 on the 2015 Corruption Perceptions Index reported by Transparency International. The Corruption Index in Finland averaged 93.79 points from 1995 until 2015, reaching an all-time high of 100 points in 2000 and a record low of 89 points in 2009. Corruption is not a systemic challenge in Finland's public procurement process, and there is no comprehensive national anti-corruption strategy in place.

The overall low level of corruption and the absence of anti-corruption measures are the outcome of three interrelated sets of factors, namely: a high level of public confidence in institutions, good administration, and self-control of civil servants. In addition, that signifies a functioning control environment facilitated by the decentralised legislative framework, tight financial monitoring, and professional peer control. Furthermore, heavy regulation and a strong legalistic tradition of administrative culture at the frontline of the fight against corruption prevails (Davey & Gatenby, 2016:72; GAN Integrity Solutions, (2015) (<http://www.business-anti-corruption.com>)).

3.3.3.2. Procurement procedure: Finland

Finland is the member state of the EU. National rules and procedures for the transposition of EU law into national law are applicable in Finland. The transposition process of EU law into national law done through the legislation process (Bianchi & Guidi, 2011:51). The concepts of contracting authorities and contracting entities defined in the Act on Public Contracts. Purchases of goods and services or public works contracts with public funds made by the state, municipal authorities, the church, and public enterprises tendered for in accordance with the procurement legislation. Procurement legislation also applies to bodies governed by public law. A body governed by public law means an entity that has a legal personality and is established for the specific purpose of meeting needs in the general interest, and not having an industrial or commercial character (Davey & Gatenby, 2016:100–101).

Public procurement legislation concerns the service, supply, or public works contracts the contracting authorities enter into with external suppliers. According to the Act on Public Contracts, public contracts are contracts of financial interest concluded in writing between one or more contracting authorities and one or more suppliers. Finland's public procurement legislation also includes specific provisions for healthcare and social services contracts (Bianchi & Guidi, 2010:52; EU, 2016:71).

Finland is characterised by a harmonised and decentralised public procurement system. Competencies in the field of public procurement in Finland split among different government authorities (Davey & Gatenby, 2016:70). The Ministry of Employment and the Economy (MEE) handles national policy making and drafting of national procurement legislation and amendments, and takes the lead in advising economic operators and contracting authorities on how the law interpreted. As part of this responsibility, the MEE works with the Association of Finnish Local and Regional Authorities (FLRA) to operate the Public Procurement Advisory Unit (PPAU), an online and telephone help desk for contracting authorities.

The Ministry of Finance is responsible for managing central government procurement, setting purchasing strategy, and conducting centralised purchasing. The Ministry of Finance is responsible for the development of public procurement with regard to the state budget, and responsible for implementing procurement strategy and development of the government procurement handbook. The State Treasury is Government–IT Shared Services (Bergman, Ståhlberg, Dreyer, Standley & Jonsdottir, 2012:51-2). The Strategic Group on Government Procurement appointed by the Ministry of Finance supports and develops the strategic steering of central government procurement as well as the implementation of the state's procurement strategy (Bianchi & Guidi, 2010:55). The Ministry of Finance has overall steering responsibility in the area of public procurement in the State government, and is responsible for setting general principles and rules (Davey & Gatenby, 2016:101).

Oversight of public procurement carried out by the Finnish National Audit Office (NAO), which controls public procurement procedures in terms of budget, accounting, and financial operations, and reports its findings to Parliament. The Association of Finnish Local and Regional Authorities creates important policy guidelines for local governments (Bianchi & Guidi, 2010:53–54; Davey & Gatenby, 2016:100–101; Bergman et al, 2012:55).

In Finland, there are two central purchasing bodies. The first is Hansel Ltd, which is the central procurement unit of the Finnish Government. Its task and roles defined in Public Procurement Act and the State Procurement Strategy. In addition, KL-Kuntahankinnat Oy, a joint procurement company, conducts joint purchasing via framework contracts exclusively on behalf of local governments (EU, 2016:71; Gabriel & Töpfer, 2009:46). In addition, utilities sector authorities are governmental authorities, state-owned companies, and municipal commercial establishments that carry on trade in the energy management, water supply, railway network, and postal services (Bianchi & Guidi, 2010:55).

Procurement practice in Finland ensures that procurement practitioners receive training in public procurement procedures by dedicated specialists, who work on behalf of the Finnish Institute of Public Management (HAUS). In this regard, HAUS implements training, development, and consultation projects for future civil servants at all territorial levels. In addition, a significant part of the Public Procurement Advisory Unit's (PPAU) activities consists in providing contracting authorities with information and advice on procurement, as well as advising businesses on issues relating to the application of procurement legislation. The Association of Finnish Local and Regional Authorities (FLRA) operates the Public PPAU. The FLRA produces information and holds procurement-training sessions aimed at building the capacity and enhancing the knowledge of procurement practitioners at the regional and local level.

Systems/tools are paramount for the Finnish procurement environment. The PPAU serves as an information and communications platform in public procurement. It spreads information related to public procurement (principally guidance on the public procurement law and its application, and examples of good practices, via e-mail and telephone advisory services, as well as newsletters and links on its website. The procedures practised in Finland are open procedure; restricted procedure; negotiated procedure; competitive dialogue; and directly awarded contracts. If the national threshold values not met, the open, restricted, negotiated, or direct procurement

procedure chosen, because the FPP is not applicable. The FPP requires the open or restricted procedures used primarily in awarding contracts. The open procedure is the basic and the most commonly used award procedure. In the restricted procedure, the contracting authority must first publish the notice. The bidder responds by sending a request invited to tender (Davey & Gatenby, 2016:105; Directive 2014/24/EU, Article 65). Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 deals with public procurement and repeals Directive 2004/18/EC.

The award procedures regarding public procurement in Finland based on the same principles as the EC public procurement legislation and the GPA Agreement. Procurement contracts must be accessible on non-discriminatory conditions to all companies that may have an interest within the EU and to companies from the Member States of the GPA. For the award of supplies, service and works contracts, the FPP sets forth altogether five different types of award procedures (Davey & Gatenby, 2016:104–105).

The contracting authority may choose to proceed with the negotiated procedure if the open or the restricted procedure does not lead to tenders or in cases where the submitted bids were unacceptable or not suitable for the purpose of the procurement in question, or where the best tender cannot be chosen by using the open or restricted procedure. When the negotiated procedure followed, the negotiations may concern any detail of the procurement contract, including price, and conducted with at least three companies. The directly awarded contract procedure used only in special circumstances in the case of direct procurement, that is, the intention to award neither published nor negotiated with a number of companies. The Finland procurement procedure provides certain procedural differences regarding awards in the water, energy, transport, and telecommunications sectors or the utility sector, and in some other sectors. The contracting authority may apply, at its own discretion, the open, restricted or negotiated procedure, once the notice or periodic indicative notice has been published (Gabriel and Töpfer, 2009:49–50).

Public notice forms a transparency infrastructure within the public procurement practice. In Finland, adequate advertising is one of the main principles of public procurement (Davey & Gatenby, 2016:104). Contracting authorities have to inform interested companies of the intention to award public procurement contracts through advertisement of notices in the public procurement section of the *Official Journal* of Finland, which sends the information to the *Official Journal* (OJ) of the EC and the Tenders Electronic Daily database. Contracting authorities have to publish the contract notice, the design contest notice, the public works concession notice, and the contract award notice on the HILMA website (Gabriel & Töpfer, 2009:8). e-Notification is mandatory for all contracting authorities above the national threshold and voluntary below the national threshold (Davey & Gatenby, 2016:104).

All tenders opened simultaneously once received. In the open procedure, the suitability of bidders and the fulfilment of the obligatory minimum criteria assessed first. In procedures other than the open procedure, the suitability of the bidders already been assessed when selecting bidders to participate in the procedure. Only the compliant tenders compared and evaluated based on the pre-set criteria. The contract awarded based on either the lowest prices or most economically advantageous tender from the point of view of the contracting authority (Davey & Gatenby, 2016:73).

The evaluation and award of tenders is another method used in Finland. Tenderers have to meet certain financial and economic criteria and be able to demonstrate their technical capability in order to participate in the award procedure. Tenderers excluded from procurement if a tenderer has, neglected his tax payments or has been convicted of certain crimes in civil court. In Finland, one of the main principles governing the award procedure is the principle that the contracting authority may accept either the tender that is financially most advantageous as a whole. This means, in terms of price and technical aspects, or the one that has the lowest price (Directive 2014/24/EU, Articles 85, 86; Gabriel & Töpfer, 2009:52; Davey & Gatenby, 2016:107).

Finnish procurement practice promotes a number of strategic goals in line with the Europe 2020 strategy, principally in environmental policy, innovation, and support to SMME development. With regard to introducing strategic goals in public procurement, Finland has been active in green public procurement for over a decade.

Issues of conflict of interest are at the center stage of procurement practices in Finland. The Act on Public Contracts does not refer to conflicts of interest as such, but governs conflicts of interest via the principle of equal treatment. Based on national case law, conflicts of interest arise when the representative of the contracting authority has commitments to, a seat on a committee of, or a monetary interest in one of the bidder companies or its closely related subsidiaries. In such a case, the representative should recuse him- or herself from participating in the procurement procedure (Davey & Gatenby, 2016:106–107).

In the Finnish procurement regulations, joint ventures are taken seriously. If the contracting authorities require the bidder to submit, extracts of their trade register or other certificates, the bidder's local corresponding documentation are allowed. The Finnish procurement laws allow bidders to merge ad hoc in order to participate by submitting an offer on certain procurement. The consortium can be a legal entity as its own or it may also exist only as an agreement between the participating parties (Bianchi & Guidi, 2010:51–52; Davey & Gatenby, 2016:103).

The remedies and enforcement procedure is regulated in the Finnish Act on Public Procurement. The Market Court (MC) acts as a specific review body on public procurement in the first instance, and has the authority to cancel a decision by a contracting authority wholly or in part. The Market Court is a special court hearing on public procurement cases in the first instance. Market Court rulings in public procurement cases are subject to appeal to the Supreme Administrative Court (Bianchi & Guidi, 2010:51, 56; Kaijalainen & Luoma, 2014:67; Gabriel & Töpfer, 2009:53; EU, 2016:71).

If a company that has participated in an award procedure wishes to seek damages, it has to prove that the damages are due to the erroneous procedure and there would have been a real chance of winning the contract if a correct award procedure followed. Remedies also include the possibility of filing an administrative complaint with the County Administrative Court, with a possibility of appealing further to the Supreme Administrative Court (Gabriel & Töpfer, 2009:45).

An administrative complaint filed in a case where the contracting authority is a municipal authority and the award is, for instance, illegal, or the contracting authority has acted in violation of its competence. Proceedings in the Supreme Administrative Court generally take at least 15 months, and in some cases, up to 24 months (Davey & Gatenby, 2016:109–110).

Finland has some interesting institutional procurement arrangements in respect of the Procurement Advisory Unit, an independent body advising government and procurement authorities on procurement practice and regulations. Finland is known for its ability to supervise its procurement procedures or regulation at all levels of government.

It has been demonstrated in the study, that Hansel Ltd is the central procurement unit of the State of Finland that aggregates the procurement needs from ministries and ministerial offices, as well as from state agencies and publicly owned enterprises. The Germany and Finland are members of the WTO GPA and apply the UNCITRAL Model Law on Public Procurement. The chances of these countries discriminating against suppliers from international and domestic sources are rare and reports in respect of discrimination reported both on the country's side and to international oversight remedial authorities, for example, courts of law.

3.3.4. Procurement practice: Brazil

Brazil is a federal state, which operates a centralised procurement practice. The analysis of public procurement procedures in Brazil will focus on the Corruption Perceptions Index, the legislative framework, institutional arrangements, the procurement procedure, and remedies and enforcements.

3.3.4.1. Corruption perceptions index: Brazil

Brazil scored 40 points out of 100 on the 2015 Corruption Perceptions Index reported by Transparency International. The Corruption Index in Brazil averaged 37.53 points from 1995 until 2015, reaching an all-time high of 43 points in 2012 and a record low of 27 points in 1995. Corruption represents a constraint to business in Brazil. The Clean Companies Act is one of the toughest anti-corruption laws in the world. The Act outlaws bid rigging and fraud in public procurement, and both direct and indirect acts of bribery. Attempted bribery of Brazilian public officials and foreign public officials is illegal in terms of the law. The Act holds companies responsible for the corrupt acts of their employees and introduces strict liability for those offences, meaning a company can be liable without fault being found (GAN Integrity Solutions, (2015) (<http://www.business-anti-corruption.com>)).

3.3.4.2. Procurement procedure: Brazil

The general characteristic of Brazilian public procurement is the low constraints put in place by international agreements. Brazil does not participate in the Agreement on Government Procurement (GPA) of the WTO (WTO 2009:85–86). Regarding Brazil's position in relation to international agreements, the priority announced by authorities is the advancement of the procurement protocol of Mercosur, which has not yet been ratified by its members (Lember et al, 2014:72).

Brazil's Constitution and the procurement regulations are the authority of the Federal government. The Federal Procurement Law, norms, rules, and procedures apply with equal force at the Federal, state, and municipal levels. State-level procurement laws, regulations, and other legal texts must therefore be consistent with the Federal Procurement Regulatory Framework (World Bank, 2010:29).

Public procurement at the Federal level is primarily regulated by Law No. 8.666, enacted on 21 June 1993, the Brazilian Public Procurement Act. Law No. 8.666 establishes general rules on tenders and contracts. This Law stipulates different procedures to be followed by public agencies, according to the subject (consultancy, public works, public auctions, products or services, acquisitions, and more) or the estimated total value of the contract (Arrowsmith, 2011:123; Amoral, 2011: 7–8; Junior, 2015:10).

The bidding procedures used by the public administration are open to all interested parties which in order to participate must submit to conditions defined beforehand in the tender notification. The principles and rules are applicable to the public administration, namely: the principles of quality, legality, impartiality, morality (honesty), and publicity, abiding by the bid invitation, objective awarding, and formal procedure (Garcia, 2009:132, 135).

Brazilian state-owned companies, such as Petrobras, have specific public bidding procedures governed by specific regulation. In the case of Petrobras, contracts relating to projects, services and purchases preceded by a simplified bidding procedure. Such procedure established by Federal Decree No. 2.745 of 1998, which contains a more flexible set of rules than those established by the Procurement Brazilian Competition (PBC) Law. Defense Federal Law No. 12.598 of 2012 (the Defense Law) establishes specific government procurement rules regarding the acquisition of goods, works and services related to military defense activities; and a special tax regime. In addition, the Special Tax Regime for the Defense Industry, which allows the suspension of some taxes on operations of strategic defense

companies and other legal entities form part of the bidding procedures (Davey & Gatenby, 2016:47).

The institutional framework is organised in terms of the federal structure of the Brazilian state and projects a character of its own on the Brazilian public-procurement policy. In spite of a unified legislation, the administrative process of procurement is highly decentralised, and each federal element, these being municipalities, states, central government and autarchies, conducts its own procurement processes (Lember et al, 2014:72).

Brazilian Federal government procurement is centrally regulated by the Secretariat for Logistics and Information Technology (SLTI), an agency of the Ministry of Planning, Budget, and Management. SLTI's activities in respect of public procurement comprises regulations, including creating legal texts of various levels, as well as dissemination of technical guidance, operating manuals and information systems. It manages the use of information technology designed to support procurement (World Bank, 2010:36).

Brazil's procurement system is implemented by highly qualified, competitively selected and - remunerated public servants in the regulatory entity or the Secretariat for Logistics and Information Technology, the various implementing agencies, the Supreme Audit Institution, and the Office of the Solicitor General. These professionals interact based on clearly defined processes and responsibilities emanating from a sound legal and regulatory framework comprising Laws, regulations, and operational manuals (Davey & Gatenby, 2016:50).

The Procurement Brazilian Competition (PBC) Law provides five different public bidding procedures discussed hereunder as follows:

- (i) Competitive bidding, in which any interested party who or which shows fulfilment of the minimum qualifications required by the request for proposal is allowed to participate in bidding;

- (ii) The request for quotation, carried out among interested parties duly registered or that meet all the conditions required for registration up to the third day prior to the deadline for the submission of the bids;
- (iii) The invitation to bid carried out among interested parties operating in the field pertinent to the object of the bid who or chosen and invited to bid;
- (iv) Contest bidding, carried out among any interested parties for the eventual choice of technical, scientific or artistic works, by awarding prizes or remuneration to the winners; and
- (iv) Auctions, carried out among any interested parties for the sale of public assets that are of no use to the public administration, or of products legally seized or attached, to whichever party offers the highest bid for the assets, which must be equal to or higher than the appraisal value thereof (Garcia, 2009:136, 141).

In Brazilian procurement practice, demand management is an important phase of the identification of needs. The procurement process starts with identification of the end users' needs. These range from relatively simple single-item procurement, for example, off-the-shelf goods, to complex projects, for example, public works and consulting services. This step always includes a price estimate or is based on market prices, and the procurement method to be adopted, for example, reverse auction (explained below), or other forms of open competitive bidding (World Bank, 2010:46).

In the evaluation and bid award stage, the Brazilian procurement practices recognise the evaluation processes, the reverse auction, e-procurement, joint ventures, and participation of foreign nationals in the bidding processes. Only those bidders considered to comply fully with the bidding documents move to the second step, when the envelopes with the price proposals opened. The contract is awarded to the qualified bidder who submits the lowest price (Davey & Gatenby, 2016:57).

The reverse auction is an important procedure in Brazilian procurement practice. The reverse auction instituted by Law No. 10.520/2000, subsequently regulated by decrees of the federal government in order to comply with the legal provisions. A

reverse auction based on a previously published invitation to bid and bidding documents providing detailed guidance to bidders. Initial prices, along with the bidders' technical, financial, and legal qualifications, are the starting point of the process. When the qualification and proposal phases inverted, the bidding commission first opens with the financial proposals, proceeds to the auction phase, and then determines the best proposal. The reverse auction phase involves the participation of only the highest-ranking bidder and the three other bidders whose financial proposals were up to a maximum of 10 percent above the value of the financial proposal ranked best (Davey & Gatenby, 2016:52; World Bank, 2010:33–34).

The Differential Public Procurement Regime Law (RDC) (*Regime Diferenciado de Contratacoes Publicas* in Portuguese – 'RDC') was included as Law No. 12.462 of 05 August 2011. Regarding the RDC, the regulation establishes that only works that appear in the Responsibilities Matrix can use their own legislation, as well as innovations including the possibility of substituting the consortia responsible for the works; the creation of parameters to choose the one with the highest price for contracts that will bring revenue to the public administration; and efficiency contracts. The RDC is an alternative for the bidding entities, allowing them to use this tool whenever they feel it is convenient to carry out this procedure. However, when opting to use the RDC, the Procurement Law may not be used (Teixeira, (2015) (<http://www.ippa.org>); Davey & Gatenby, 2016:52–53).

e-Procurement is a key element of public procurement practice in Brazil, and Brazil's procurement relies on advanced technology, both internally, for example, management and database systems; and externally, for example, the Internet. Its strategic use at the Federal level and in São Paulo is imperative to producing efficient and transparent results and exercising effective control over expenditure (World Bank, 2010:42; Davey & Gatenby, 2016:54).

In Brazil, joint ventures regulated by Brazilian law, and the federal and state governments and municipalities are entitled to establish consortiums with the purpose of co-operation to achieve a common interest (Brazil, Federal Republic, Embassy of Brazil in South Africa, 2017:65). A consortium can be public or private, and have its own legal identity through the formation of a public or private association, a public autonomous entity, or even a state company. The execution of public agreements between public entities also permitted. Brazil procurement laws allow the participation of foreign suppliers in the bidding procedure. The incorporation of a subsidiary in Brazil is not required (Davey & Gatenby, 2016:50, 56).

Enforcements applied in the procurement environments. Brazil's Tribunal de Contas da União (TCU) is the country's supreme auditor, where remedies and enforcement reside. TCU derives its authority from Articles 71 and 73 of the Constitution, which establish TCU's role, which is similar to that of the Government Accountability Office (GAO) in the USA (World Bank, 2010:40). All conduct and decisions made during the bidding procedure must adhere to the applicable laws and the request for proposals, and can be challenged both in the administrative and judicial spheres (Davey & Gatenby, 2016:58–59). Bidders intending to protest must first do so with the authority that managed the process, either the auctioneer or the bid evaluation committee. Bidders may protest the bidding documents up to five business days before the bid opening. Regarding the appeals, the response time is within three days of the filing. The agency must decide on the protest within five days (World Bank, 2010:48).

The study has shown that highly qualified, competitively selected and -remunerated public servants in the regulatory environment practise the administration of procurement in Brazil. The four case studies suggest that procurement practice is systematically and promoted in the case study countries. The case study countries all structure their procurement regulations. They set out regulations on public procurement in their Constitutions, to establish the general rule for public bidding and/or to define the legal nature of the exceptions, to preserve guiding principles for

procurement regulatory frameworks, or to establish the conditions for a regulatory agency.

China and Brazil are not members of the WTO GPA and UNCITRAL Model Law on Public Procurement, despite the fact that China has transformed her procurement regulations. Petrobras a public company was involved in “Car Wash” scandal, which projected Brazil labelled a corrupt country. However, Brazil's procurement practice allows innovation to thrive in terms of the promotion and empowerment of the local SMMEs. Although Brazil has highly qualified professionals, Germany public procurement environment enhanced with trained professionals and make use of Public Procurement Committees to address fundamental procurement matters. The Public Procurement Committees are a combination of public- and private-sector experts and businesses. Finland has some interesting institutional systems and tools such as the Hansel procurement unit of the Finnish government, and the Public Procurement Advisory Unit, an independent body advising government and procurement authorities.

3.4. Conclusion

In this chapter, international public-sector procurement, the first objective of the study on the administration of public procurement practices, was analysed, and sets up a precursor to chapter 4. The study zoomed in on different regions and analysed the cases of Asia (China), Europe (Germany and Finland), and North America (Brazil), relating to procurement legislative and institutional frameworks, procedures, processes, and remedies or enforcements. Governments globally have to harmonise the procurement procedures and standards by working together in a collaborated effort. It is emerging internationally that the notions of value for money, transparency, and competition are principles taking the centre stage in public finance and procurement practices. The four case studies suggest that procurement practices are systematically organised and promoted in these countries.

The four countries' case studies have demonstrated the existence of government procurement regimens, with similarities and differences in their areas of jurisdiction. As emerged from the analysis, a number of lessons drawn from the procurement regulations were profound. The institutional and legislative procurement requirements are important and fundamental for the successful administration of procurement practices and procedures. The South African public sector can learn from internal procurement practice in terms of how these countries and the international bodies such as the EU, WTO and UNCITRAL have organised the procurement authorities. The Government Procurement Agreement (GPA) is a plurilateral agreement between World Trade Organisation (WTO) member countries who agree to open up their non-defense public procurement markets to each other. The UNCITRAL Model Law on Public Procurement recommends open bidding as the method of procurement that is effective in promoting competition, economy, and efficiency. The Model Law on Public Procurement has become an important international benchmark in procurement law reform is an important instruments to guide the administration of public procurement practices in the public sector. Public procurement organisational structure should be equipped with sound infrastructure to administer procurement practices effectively. A quality workforce is an important ingredient for the success of the procurement environment.

China considers national policy imperatives relating to “buying China products and promoting SMMEs” as procurement socio-economic tool. The GPL requires that government procurement conducted in a combination of centralised and decentralised fashion. National policy imperatives are important in the Chinese public procurement regulations. China considers remedies and enforcements as procurement environment and relies heavily on administrative supervision. However, China is not a member of the WTO GPA and UNCITRAL Model law on Public Procurement.

In Germany, public procurement law subsumes a multitude of national and international laws and regulations as well as a variety of regional rules and

agreements. German public procurement law consists of a multi-layered structure of legal rules. In Germany, placed in the context of competition law, public procurement is regulated at national and subnational level. German Government Procurement Regulations and Practice governed by the GWB against restraints of competition. A unique element of Germany's public procurement institutional set-up is the Public Procurement Committees. These bodies are a forum for stakeholders from federal, federal state and local administrations, public-private organisations such as Chambers of Industry and Commerce, and the private sector. The national policy imperatives are viewed an important element aiming to promote small and medium-sized companies.

Finland is characterised by a harmonised and decentralised public procurement system. Competencies in the field of public procurement in Finland split among different government authorities. In Finland, there are two central purchasing bodies namely: The Hansel Ltd, which is the central procurement unit of the Finnish Government and KL-Kuntahankinnat Oy, a joint procurement company, conducts joint purchasing via framework contracts exclusively on behalf of local governments. Public notice forms a transparency infrastructure within the public procurement practice. The remedies and enforcement procedure is regulated in the Finnish Act. Finland has some interesting institutional procurement arrangements in respect of the Procurement Advisory Unit, an independent body advising government and procurement authorities on procurement practice and regulations. Germany and Finland are members of the WTO GPA and apply the UNCITRAL Model Law on Public Procurement. The chances of these countries discriminating against suppliers from international and domestic sources are rare and uncompetitive process in respect of discrimination reported both on the country's side and to international oversight remedial authorities, courts of law. The Germany Procurement Committee and Finland's advisory unit are profoundly impressive in terms of the role they play in the facilitation of procurement activities; from which it is critical for the South African public procurement practice to learn.

Brazil is a federal state, which operates a centralised procurement practice. Brazil does not participate in the Agreement on Government Procurement. Brazil's procurement system is implemented by highly qualified, competitively selected and - remunerated public servants in the regulatory entity or the Secretariat for Logistics and Information Technology, the various implementing agencies, the Supreme Audit Institution, and the Office of the Solicitor General. Enforcements are applied in the procurement environments. Brazil's Tribunal de Contas da União (TCU) is the country's supreme auditor, where remedies and enforcement reside. e-Procurement is a key element of public procurement practice in Brazil, and Brazil's procurement relies on advanced technology.

The principles of the administration of procurement practices domestically and internationally should have procurement regulation, capacitated institution in terms of warm bodies and professionals of bid committees and staff applying procurement procedures and bid processes effectively. Paramount to that is the effective governance structures and procurement framework.

South Africa can replicate some important lessons from the four case studies, especially with regard to the issues of governance structures and the appointment and training of professionals. In the interest of objectivity of the analysis of the public procurement practices in the South African public sector, this study also presented a brief overview of the public procurement procedures in selected countries. International public-sector procurement put the objective focus of the study on the administration of public procurement practices in context, which acts as a precursor to chapter 4, which also addresses the first objectives of the study.

CHAPTER 4: PUBLIC-SECTOR PROCUREMENT: A SOUTH AFRICAN PERSPECTIVE

4.1. Introduction

The previous chapter analysed the international public procurement regimens focusing on the case studies in China, Germany, Finland and Brazil. The previous chapter set a scene, ushered in the administration of procurement practices in terms of the legislative framework, institutional frameworks, procurement procedures, and bid processes as practised in the case study countries. This chapter will seek to analyse the procurement practices in the South African public sector with special attention to legislative framework, institutional framework, and procurement procedures, bidding processes, and remedies and enforcement. The analyses of the administration of procurement practices in the South African public sector will demonstrate how such a practice would feature in the international procurement arena.

This chapter will address the first objective of the study on the administration of procurement practice in the public sector. The administration of procurement practices in South Africa finds its expression from the Constitution and the entire legislative framework regulating government procurement in South Africa, based upon five foundational principles of accountability, transparency, value for money, fairness, and equity. The public sector is the market regulator and market participant as they regulate the public procurement process by establishing legal and regulatory framework.

4.2. Public procurement reform

The South African public sector has undertaken several reforms since the advent of democracy in 1994. The intention of the procurement reforms was to modernise management of the public-sector procurement practice and make it more people

friendly and sensitive to meeting the needs of the communities it serves (Ambe & Badenhorst-Weiss, 2012:245).

Procurement reforms in government started in 1995 and directed at two broad focus areas, namely; the promotion of principles of good governance, and the introduction of a preference system to address certain socio-economic objectives. The other organs of state replicated the procurement reform measures in the national sphere of government. It was imperative that very divergent interpretations of government's procurement objectives and strategies became paramount (RSA: National Treasury, 2003d:2-3). The high-level policy strategy objectives of the transformation agenda (RSA: National Treasury, 2003d:1) in the public sector were underpinned by the following imperatives:

- (i) Promoting uniformity in the processes relevant to the repealing of tender board legislation in the various spheres of government and devolving the responsibility and accountability for procurement-related functions to accounting officers/authorities.
- (ii) Promoting uniformity in the various spheres of government in the interpretation of government's preferential procurement legislation and policies in the context of other broad-based but related legislative and policy requirements of government.
- (iii) Replacing the outdated procurement and provisioning practices in government with a procurement function and a systematic competitive procedure for the appointment of consultants as an integral part of financial management in government that conforms to internationally accepted best practice principles.
- (iv) Introducing parameters for the promulgation of a regulatory framework in terms of the PFMA and MFMA to ensure compliance with minimum norms and standards; but in such a manner that the principles of co-operative governance observed.

This Policy Strategy document sets the broad parameters for a consistent approach in all organs of state for the introduction of the principles and philosophies of

government's supply chain management function. Issues of monitoring, training and the establishment of the Supply Chain Management (SCM) unit was part of the reforms.

In 2015, the Office of the Chief Procurement Officer (OCPO) established with the objective of modernising and overseeing the South African public-sector SCM system. In addition, the establishment was to ensure that the procurement of goods, services and construction works was fair, equitable, transparent, competitive, cost effective, and in line with the Constitution and all relevant legislation. The OCPO is not directly involved in procurement, but leads and manages procurement reform, maintains the procurement system, and oversees the way in which government does business with the private sector (RSA: National Treasury, 2016c:2-3).

In terms of the new arrangement, the departments' and entities' accounting officers and accounting authorities will be responsible for all day-to-day SCM activities in line with the PFMA and the MFMA. The accounting officers' and accounting authorities' responsibilities will include developing their own SCM policies and management systems, and staff training and development in line with the national Supply Chain Framework (RSA: National Treasury, 2015d:6).

South Africa is a young democracy and needs to continue with procurement reforms to meet the public procurement innovation of the 21st century. However, as was demonstrated in chapter 3, South Africa need to determine whether to apply centralised or decentralised organisation. South Africa is still young when compared to the international procurement regulations. This country still lags behind in terms of the procurement regulatory rationalisation, as indicated that Germany uses multi-layer procurement regulations, and have multidisciplinary Procurement Committees; China applies two bidding laws; and Finland operates single-procurement regulations and has a Procurement Advisory Unit. In addition, Brazil has a highly professionalised environment and quality staff training.

4.3. Public procurement practice

Public procurement is a government tool of paramount importance to achieving socio-economic objectives because it operates at the intersection of the government's regulatory and buying powers. The South African government can apply it as stated above. In this section, the background information, Corruption Perceptions Index, bidding procedure, bid award and evaluation, remedies, and enforcement will be analysed. The analysis will demonstrate how the administration of procurement practiced in the South African public sector.

4.3.1. Corruption perceptions index: South Africa

It emerged that not much has changed for South Africa (SA) in the 2016 Corruption Perceptions Index, released by Transparency International (TI). Using surveys and questionnaires, the index ranks countries on a scale from 0 (perceived to be highly corrupt) to 100 (perceived to be very clean), in terms of their perceived levels of corruption. With a 2016 ranking of 64 out of 176 countries and a score of 45 out of 100, compared to the 2015 ranking of 61 out of 168 and score of 44 out of 100, the country has improved only marginally in terms of score, which is the real indicator of perceptions about corruption in the country. The rank is an indication of where a country stands in relation to others and it changes as the number of countries surveyed changes or as other countries improve or decline. The good news is that the score and ranking have remained more or less stable. The bad news is that, with a score below 50, South Africa still among those countries deemed to have serious corruption problems (TI, 2015; 2016).

The slight improvement in the score is by no means cause for rejoicing and indeed, it may come as a surprise, given the concerns about widespread corruption during 2016. This coupled with the risks of a major escalation in organised crime and illicit trade because of their close relationship. South Africa has steadily been performing worse from year to year (2015 and 2016) in the Corruption Perceptions Index (CPI),

which ranks countries/territories based on how corrupt a country's public sector perceived to be. This state of affairs could prove damaging to the country's reputation (IRMSA, 2015:16).

4.3.2. Legislative framework

The legislative requirements are a fundamental starting point of application of the supply chain management system in the South African public sector. Parliament has established a legislative regimen for the procurement procedures and decisions of organs of state in order to reflect the constitutional status of public procurement in South Africa. The objectives of the public procurement policy in South Africa are largely the same as they are for most national procurement systems. 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. Constitutional importance is therefore given to the objectives of value for money, integrity in public spending practices, accountability to the public, and efficiency in the procurement procedure for procurement.

Section 217 of the Constitution also makes provision for organs of state to use the contracting power for empowerment purposes. Organs of state not prevented from implementing a procurement policy that provides for categories of preference in the allocation of contracts and the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination. The use of such procurement must in terms of section 217(3) take place in accordance with national legislation. The most important pieces of legislation would include a Procurement Act and its regulations. To this end the Preferential Procurement Policy Framework Act (5 of 2000) (PPPFA) (RSA, 2000c) (hereafter referred to as "the Procurement Act" and/or "PPPFA") was enacted in 2000, and provides a framework for the implementation of preferential procurement policies. Regulations in the Act further flesh out the use of procurement as an empowerment tool. In June 2011, new Regulations were redrafted to bring

them more in line with South Africa's Broad-based Black Economic Empowerment Act, enacted in 2003 (RSA, 2003a). The aim of the Broad-based Black Economic Empowerment Act is to among others to establish a legislative framework for the promotion of black economic empowerment (BEE) in South Africa. The Act aimed at the adoption of a uniform approach to BEE in South Africa. The Act includes procurement practices by organs of state (Arrowsmith & Quinot, 2013:179).

At national and provincial level, the Public Finance Management Act regulates financial management in the national and provincial government. Regulations enacted to address supply chain management and conclusion of public-private partnerships. At Local government levels, the Municipal Systems Act enables municipalities to provide municipal services by way of service delivery agreements, the selection of service providers then having to be done through specified selection and pre-qualification process. The Municipal Finance Management Act aims to secure sound and sustainable management of financial affairs of municipalities and other institutions in the local sphere of government.

Further, Regulations have been enacted that address superficially supply chain management and the conclusion of public-private partnerships. South Africa is not party to WTO GPA and the UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994). This Model Law (1994 UNCITRAL Model law), as superseded in 2011 by the UNCITRAL Model Law on Public Procurement, has not had a noticeable influence in the crafting of South African public procurement regulations (Arrowsmith & Quinot, 2013:185).

In South Africa, there also express legislative provisions regulating the way in which specific powers exercised. The Promotion of Access to Information Act, 2000 (Act 2 of 2000) (RSA, 2000d) gives effect to the constitutional right of access to information. The Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) (RSA, 2004a) creates offences in respect of corrupt activities relating to contracts and to the procuring and withdrawal of tenders.

It is evident that the enabling legislations and regulations confirm the principles as articulated in the 1996 Constitution (RSA, 1996). The legislations embed fundamental procurement system issues relating to ethics; prevention of fraud; administration of justice; access to information; empowering communities or emerging suppliers; regulations; and standards and norms.

Despite the clear public procurement principles set out in section 217(1) of the Constitution, myriad statutes and regulations exist. Those statutes and regulations deal with specific aspects of public procurement without a single, coherent piece of legislation guiding public procurement in its entirety. In some respects, the division of rules between different instruments are unproblematic and even unavoidable. The fragmentation of public procurement results in a less-than-ideal regulatory regimen. There is an emerging problem from the fragmented regulatory landscape pertaining among others to significant overlap and duplication between different regulatory instruments, leading to uncertainty in terms of which one to follow (Quinot, 2014:7, 9, 44–45; RSA: National Treasury, 2015d:9). There are more than 80 different legal instruments governing public sector SCM. The regulatory landscape in South Africa with regard to public procurement fragmented across a range of different planes. They include divergent regulations across different levels of government and spheres of government, between different supplier sectors, different in relation to distinct objectives, and divergent in terms of types of regulatory instruments employed.

However, the supreme law, the Constitution of the Republic of South Africa, 1996 (RSA, 1996) lays the foundation for public procurement. Section 2 stipulates that any “law or conduct inconsistent with it [the Constitution] is invalid”, thereby placing a responsibility on the public sector to ensure that the laws are approved and that the execution of public-sector activities adheres to the principles and requirements of the Constitution. As stated in Fourie (2015)(<https://www.researchgate.net/publication>), the system whereby public procurement must take place is articulated in section 217(1) of the Constitution, which states that procurement must take place “in

accordance with a system which is fair, equitable, transparent, competitive and cost effective”.

Procurement regulation as practised in SA is fragmented. The National Treasury (2015d: 10) asserts that more than 80 different legal instruments govern public-sector supply chain management in South Africa. Countries such as Germany, with federal arrangements, have multilateral arrangements and have few procurement regulations, which deals with defense, procurement for goods, services and works and professional services successfully. South Africa needs to rationalise its public procurement regulatory environment so that it is user friendly to the suppliers and practitioners. There is a need for a common, simplified approach to the regulation, for example, taking a three-pronged approach: procurement for goods and services for all spheres – nationally and locally; procurement for construction and works – nationally, provincially, and locally. The South African approach is a mixture of a central and a decentralised model.

4.3.3. Institutional arrangements

The general institutional arrangement in terms of the PFMA (Act 1 of 1999) (RSA, 1999b) is that of a decentralised financial management structure. The core financial management function rests with the accounting authority of each organ of state (Quinot, 2014: 24). It contains little about public procurement in SA as it places the obligations on accounting officers/authorities. By the looks of things, this is a double decentralisation. National and Provincial Treasuries play an oversight role with regard to financial management within each organ of state, including procurement functions. The PFMA is the sole source of legal powers of the National Treasury regarding regulation of the procurement function. The Act gives the National Treasury general functions and powers of oversight, which also apply to public procurement.

In South Africa, the government offers training in public procurement and/or SCM. However, with the levels of unethical conduct in national departments, this aspect needs review, as it is an obstacle to the administration of procurement practice. The

reports generated by AGSA indicate continuous poor policy implementation and operational flaws in institutional SCM oversight. These weaknesses include the inability of staff to interpret and apply SCM policies and standards. However, the underlying problem is that SCM carried out within a decentralised legal framework, at two distinct levels: operational and regulatory. Operationally, it is carried out by SCM units in individual organs of state, and the regulatory function is also largely decentralised, governed by rules formulated at entity level as part of SCM policies (RSA: National Treasury, 2015d:9). Although South Africa articulates procurement as a socio-economic goal, it does not have a pronounced procurement policy.

From the procurement practice point of view, it can be argued that Regulations, Guidelines, Codes of Conduct, and standard practice notes, needing implementation should complement procurement laws. The instruments should serve to help the procuring authorities and suppliers of goods, services and public works to carry out procurement processes according to procurement law and best practices. Over and above that, there should be an oversight authority to monitor and evaluate in order to determine whether procurement procedures conducted according to procurement law. The oversight that should be coming from the center is insufficient because procurement practice is not centralised. Hence, there is laxity in terms of monitoring and evaluation in the procurement environment.

Bid committees play an important role in the administration of procurement practices. Practice Note 4 of 2004 to the Code of Conduct for Supply Chain Management Practitioners states that the Bid Committees should regulate Supply Chain Management on behalf of the Department in an honest, fair, impartial, transparent, cost effective, and accountable manner. The Accounting Officer is required to appoint at least three committees that will assist him/her in the proper execution of his/her duties.

The delegated authority will vary across different committees. All members appointed to any bid committee appointed in writing and in line with the Code of Conduct for Public Service, chapter 2 of the Public Service Regulations 2001, Practice Note 4 of

2004 to the Code of Conduct for Supply Chain Management Practitioners, and the circular in terms of the Code of Conduct for Bid Adjudication Committees. Bid committee members are required to sign a “Declaration of Interest” document provided by the Accounting Officer/Authority; all members cleared at the level of “confidential”; and all members must declare their financial interests annually to the accounting officer. Bid committee members should possess skills on regulatory practices; knowledge of policies; contract management and administration; financial analysis; industry acumen; commodity-specific knowledge of the potential supply base; supply chain management; and project management. Despite the above requirements, the majority of bid committee members are not experts in bidding procedures and practice, which compromises the outcome of the bid specifications, bid evaluation, and bid adjudication.

The bid specification committee compiles the specifications for each procurement, while the bid evaluation committee evaluates bids in accordance with the specifications for a specific procurement and the points system as set out in the supply chain management policy of the procuring entity and the PPPFA. The bid adjudication committee considers the report and recommendations of the bid evaluation committee, and either, depending on its delegations, make a final award or a recommendation to the accounting officer to make a final award, or make another recommendation to the accounting officer on how to proceed with the relevant procurement. The regulation specifies how bid committees should conduct their business. However, the administration of the procurement practices challenged by non-adherence to those regulations in the operations of bid committees discussed in chapter 5 of this study.

4.4. Procurement procedures

Kabega, Kule and Mbera (2016:377) view procurement as part of the fiscal policies and programmes directed towards achieving effective and efficient public financial management and national development. As an economic instrument for generating

national developments, when well organized, planned and implemented, procurement has the potential of contributing to realisation of effective project implementation and completion. Procurement ensures that the public gets value for money as it brings accountability and transparency into the procurement process. To that end, cost effectiveness and genuinely high-quality service delivery will be entrenched.

There are different ways of categorising procurement procedures, for instance: distinguishing between types of procedures with or without a public notice; procedures with one or several stages; or procedures with or without negotiations. The South African public sector uses all of the procedures, namely: open procedure or competitive, restricted procedure, competitive dialogue, and negotiated/solicited procedure. However, the open or competitive bidding procedure is mainly used. The negotiated bidding system used in special circumstances, especially with regard to emergency procurement. National departments are still challenged by unethical procurement processes in acquiring goods and services, despite the important socio-economic role played by the procurement function. Every organisation that purchases goods or services has standard procurement procedures, with guidelines relating to the methods they use to acquire those things (RSA: Western Cape Provincial Treasury, 2012c:20–27).

The Construction Industry Development Board (CIDB) prescribes standard procurement procedures as a negotiated procedure comprising a nominated procedure from among the following; the open procedure; the qualified procedure; the quotation procedure; the proposal procedure using the two-envelope system; the proposal procedure using the two-stage system; and the shopping procedure. The shopping procedure called a competitive selection procedure, where a tender offer is solicited from a single tender, in any procurement procedure in which the contract is normally awarded to the contractor who submits the lowest financial offer or obtains the highest number of tender evaluation points. The competitive negotiation procedure consists of both restricted and open competitive negotiations. These are procedures, which reduce the number of tenderers competing for the contract through

a series of negotiations until the remaining tenderers invited to submit final offers (CIDB, 2015:7).

Ngoveni (2011:15) refers tendering as to the request for quotations, request for proposals for information or request for tenders, and direct contact with the suppliers are some of the procurement procedures. Tendering is a process where an organisation invites suppliers for the supply of goods and services, and awards the contract to the best offer according to predetermined criteria without regulation (Woods, 2008:235). Tendering, according to Woods, is seen as an imperative for an anti-corruption mechanism.

The competitive bidding tendering system fulfils the principles of free competition. According to Junior (2015:6), open competitive tendering by any registered supplier that meets the requirements and pre-qualifications may submit a bid. Competitive bidding recognised by the procurement legislation at national, provincial and local levels. In line with the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) (RSA, 2000c), an organ of state may determine a preference for categories of service providers in order to advance the interest of persons disadvantaged by unfair discrimination.

In South Africa, goods, services, or a combination thereof procured from the open market. Tenders, however, maybe solicited from a confined market where it is established with reasonable certainty that:

- (i) only a sole contractor is able to provide the goods or services or any combination thereof;
- (ii) only a very limited number of contractors are able to provide goods, services or works which are not freely available in the market, or which are provided solely for the organ of state in accordance with unique requirements; and
- (iii) there is justification for standardising goods or making use of manufacturer-accredited service providers (RSA: National Treasury, 2015d:39).

The standard procurement procedures implemented under the stated conditions in accordance with the provisions of SANS 10845-1, a South African National Accreditation System document regulating the construction industry. Projects should not be subdivided in order to reduce the estimated tender value to fall within a threshold applicable to a specific procurement procedure. The procurement processes also apply to public infrastructure. South African citizens are surrounded by public infrastructure such as offices and facilities, which provide places of work for officials; and schools, hospitals and clinics, which provide essential services. Roads and railways not only enable travel, but also distribute goods and services. Dams provide water for human consumption and agricultural and industrial purposes. Networks deliver water and electricity to consumers and convey industrial effluent, soil water and wastewater to treatment works. Public infrastructure is any combination thereof associated with the acquisition, refurbishment, rehabilitation, alteration, maintenance, operation, or disposal of infrastructure (RSA: National Treasury, 2015d: 4).

It can be argued that the public infrastructure procurement process follows project initiation; infrastructure planning; strategic resourcing; pre-feasibility studies or assessments; preparation; briefing; and feasibility. In addition, the process takes into consideration concept and viability; design development; production information and manufacture, fabrication and construction; general information, works; handover; and package completion.

The study has demonstrated in this section that public procurement regulations constructed in such a way as to improve the administration of procurement practices. Fragmented regulations will stifle application and confuse the users. The organisational arrangements should allow both centralisation and decentralised procurement arrangement. South Africa as a unitary state dictates that public sector should have such arrangements. The roles of the centralised procurement practices should be clearly spelt out in the procurement regulation in order to streamline procurement practice. The decentralised arrangement should be deliberate and

promote effectiveness, efficiency, competition, accountability, transparency, and value for money; and be free from unethical procurement practices. Although South Africa articulates procurement as a socio-economic goal, it does not have a pronounced procurement policy.

4.5. Bidding processes

To understand procurement fraud and corruption in public procurement, it is important to understand the procurement process. The public SCM cycle has three key stages: pre-tender, tendering, and post-tender. The pre-tender stage includes needs assessment, planning and budgeting, development of specifications, and selection of the most suitable procurement strategy. The tendering stage includes the invitation to tender, and evaluation and adjudication of bids. Post-tender includes contract management, ordering, and payment (RSA: National Treasury, 2015d: 16).

4.5.1. Planning stage

The South African pre-bidding stage relates to needs assessments and budgets, bid specifications, compilation of bid documents and public notice, and supplier database registration. In addition to the above, the bidding process outlines among others e-Procurement practice and tender deviations. In the following section, an analysis of the pre-bidding stage focused on the following;

The pre-tender stage includes a decision on the scope of the governmental need that is, deciding which goods, services or works purchased. The procurement officials need to identify the relevant technical requirements to determine what exactly will be sought from the private sector and when. The pre-tender stage also includes the structuring of the contracting process. In this regard, procurement personnel generally follow a pre-existing regulatory structure to determine how the process will work, including the timeframes for bidding, the stages in the process, the number of bidders who are eligible, any applicable restrictions or exceptions from normally

applicable processes, and what transparent communications systems and opportunities are available between the procuring entity and the bidders. The pre-tender stage also involves budgeting (UNODC, 2013:6).

Government is the country's largest buyer of goods, services and construction works. To ensure good quality, efficient and cost-effective delivery and therefore achieve government's objectives, its SCM policies and legal environment must be clear and simple (RSA: National Treasury, 2015d: 9). Demand planning, procurement planning, item and specification management, and supplier management are critical phases in the pre-tendering stage. This stage ensures that goods, services, construction work and other purchases are properly planned and aligned to the procuring entity's strategy and resource plan (RSA: National Treasury, 2015d:16).

The government should procure goods, services or works only if there is an identified need in the near future. Undoubtedly, needs assessment will in particular involve a decision as to whether the envisaged purchase is required at all, and whether the envisaged quantities and technical requirements and the time and location for contract performance are justified. After the needs, assessment comes the estimation of costs for the goods, services or works purchased. Costs estimated based on past procurements or based on sound forecasting methods. Procuring entities must ensure timely budget approval and verify that funds are available. Complex projects, such as large-scale infrastructure projects or complex information, technology projects are likely to require external specialist advice. The demand management system should be aimed at ensuring that goods and services, and any combination thereof required to support strategic and operational commitments, are delivered at the right price, time and place, and that the quality and quantity of such goods or services satisfy needs. Demand management is a cross-functional exercise that brings the supply chain practitioner closer to the end user and ensures that value for money is achieved (RSA: National Treasury, 2015d:16).

Notably, the objective of demand management is to ensure that the resources required to fulfil the needs identified in the strategic plan of the department/entity are delivered at the correct time, price and place and that the quantity and quality will satisfy those needs. As part of this element of SCM, a total needs assessment should be undertaken. The demand management system must ensure that the goods and services required supporting the strategic and operational commitments of the institution are delivered at the right price, to the correct location, and that the quality and quantity satisfies the needs of the institution (RSA: National Treasury, 2003d:21; 2012a:120). The market research for demand management is important in value for money principles (Van Weele, 2010:125, RSA: National Treasury, 2015d: 28; Crandall et al, 2010:147; Mentzer, Myers & Stank, 2007:68).

In South Africa, procurement standards and procedures are critical when planning for procurement of goods, services and public works. Standards and technical specifications quoted in bidding documents should promote the broadest possible competition. The institution should specify accepted standards with which the equipment, materials, or workmanship should comply, such as those issued by Standards South Africa (the division of the South African Bureau of Standards responsible for standards), the International Standards Organisation, or an authority recognised by the South African National Accreditation System (SANAS). Specifications based on relevant characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications avoided (RSA: National Treasury, 2004f:27).

It is noteworthy that, acquisition management addresses the preferential procurement policy objectives that may need to be met through a specific contract. Acquisition management is the management of procurement (Migiro & Ambe, 2008:232). The system of acquisition with the supply chain management must be effective and efficient in order to ensure that goods and services are procured in accordance with the authorised processes and the threshold values for the different range of procurement processes (RSA: Western Cape Provincial Treasury, 2012c:19-22).

Certainly, specifications are a key guide in the pre-tendering stage. The procedure allows contracting authorities to provide specifications of good, services, and public works. The supply chain management system of the organ of state must provide for an effective and efficient demand management system. A needs assessment should precede the implementation of supply chain management (Migiro & Ambe, 2008:232).

It is worth mentioning that, bid documents need to be compiled in terms of the procurement national standards and norms. In South Africa, the compilation of bid documents is an important procedure in the procurement process environment. To strive towards uniformity, all contracts based on the general conditions of contract issued by the National Treasury. These conditions should form an integral part of the bidding documents. The basis for bid evaluation and selection clearly outlined in the instructions to bidders and/or in the specifications (CIDB, 2015:7).

Notably, institutions should customise and use the appropriate standard bidding documents issued by the National Treasury with minimum changes acceptable to the accounting officer/authority, as necessary to address contract- and project-specific issues. The standard wording of the general conditions of contract must not be amended. The standard bid documentation and general conditions of contract issued by the Construction Industry Development Board (CIDB) should be utilised in cases of bids related to the construction industry. The bidding documents should clearly state the type of contract entered into and contain the appropriate contract provisions. Bid content documents should specify clearly and precisely the work to be carried out; the location; the goods to be supplied; the place of delivery or installation; the schedule for delivery or completion; minimum performance requirements; and the warranty and maintenance requirements, as well as any other terms and conditions (SANS 10845-1, 2015:19).

It can be argued that, each prospective bidder provided with the same information and assured of an equal opportunity to obtain additional information on a timely basis. Institutions should provide reasonable access to project sites for visits by prospective

bidders (SANS 10845-1, 2015:30). For works or complex supply contracts, particularly those requiring refurbishing of existing works or equipment, a pre-bid meeting may be arranged for potential bidders to meet with the institution's representatives in order to seek clarifications (RSA: National Treasury, 2004c:34–35).

Certainly, publication of tender notices and transparent practice is fundamental to notify and encourage interested bidders to bid. A notice published in the language directed by the authority or organisation in a medium that enables a wide spectrum of suitably qualified and eligible tenderers to access the opportunities presented. In South Africa, public procurement regulations emphasise the stimulation for the promotion of BEE and the development of HDIs (historically disadvantaged individuals) and SMMEs. To this end, institutions should advertise in the local media for businesses to register as potential suppliers for goods and services obtained by means of quotations. Quotations for the required goods/services obtained from all potential suppliers in the specific category or on a rotation basis from various suppliers (RSA: National Treasury, 2004c:31).

To this end, where goods, services or works of a technical/specialised nature are required on a recurring basis, a list of approved suppliers for the supply of the goods, services or works established. These lists established through the competitive bidding process. The intention to establish a list of approved suppliers should be published in the Government Tender Bulletin, and the closing time and date for inclusion in the list of approved suppliers should be indicated (RSA: National Treasury, 2004c:42).

In South Africa, bidders, required by law to register with regulatory bodies regarding their goods and/or services delivered or rendered, should ensure that their relevant registration is in order prior to the closure of the advertised bids. In terms of procurement regulations and legislation, each organ of state must keep a database of businesses that they can contact if they want to get quotes for all types of commodities and services. The idea is to pre-accredit the service providers to ensure that they are legitimate businesses and know what each business can do (Davey &

Gatenby, 2016:255). A Central Supplier Database (CSD) for Government introduced on 1 September 2015. Suppliers register on this database once to do business with government. The CSD was compulsory for Local Government from 1 July 2016. The CSD accessed at www.csd.gov.za (RSA: National Treasury, 2016c:7).

A procuring entity should therefore publish a public notice of its intent to procure goods or services, so that potential bidders can become aware of any contract opportunity with the government. Advertising a notice of intended procurement is one of the cornerstone elements of an appropriate procurement system. Timely notification of bidding opportunities is essential in competitive bidding. Bids advertised for a period of at least thirty days before closure in at least the Government Tender Bulletin and in other appropriate media should the Accounting Officer/Authority deem it necessary to ensure greater exposure to potential bidders. This applies except in urgent cases, when bids may be advertised for such shorter periods as the Accounting Officer/Authority may determine. The shortened tender period cannot be less than 14 days. The related pre-qualification or bidding document, as the case may be, should be available on the publication date of the advertisement (United Nations, 2013:20).

In South African public procurement practice, the time for the bid opening is the same as for the deadline for receipt of bids or promptly thereafter and announced, together with the place for bid opening, in the invitation to bid. The institution should open all bids at the stipulated time and place. Bids should be opened in public, that is, bidders or their representatives allowed being present. The names of the bidders and their respective total prices should be recorded when bids are opened and bid amounts should be read aloud. The bids must be opened in public directly after the cut-off time (RSA: National Treasury, 2004c:44).

The e-Procurement practice has gained momentum globally. Electronic systems have great potential to increase the efficiency and effectiveness of government spending. At present, SCM is supported by a diversity of systems that vary in

functionality, scope and efficiency. They are fragmented and under-utilised, and 45 percent of total supply chain activities are conducted manually. A uniform SCM system for government is essential to optimise the efficiency of service delivery. A number of technological SCM innovations phased in since 2015 and compliance with them became compulsory from 1 April 2016. These include the Central Supplier Database, e-Tender Portal, g-Commerce, and e-Procurement. Bid documents are made available to bidders free of charge on a single platform that is searchable and accessible 365 days a year (RSA: National Treasury, 2016c:7–8).

The administration of procurement practice in the South African is inadequately practised, especially with regard to criteria and point systems, not implemented when bids evaluated. The specifications are often not followed. At times, the quality of work performed will suggest that market intelligence not conducted to determine the value for money when needs assessments conducted. e-Procurement is still new in South Africa, and the old manual system is still being practiced. As such, the e-Procurement practice is not fully compliant with international standards.

The study demonstrated that procurement authorities have a responsibility to achieve value for money, through fair and open competition. The procurement authorities must comply with their legal obligations under procurement rules and adhere to issues of equal treatment, non-discrimination, mutual recognition, and proportionality transparency. Given the limited resources available to government, ensuring value for money in procurement is key to ensuring the optimum utilisation of scarce budgetary resources. Procurement authorities, and primarily their accounting officers, are responsible for achieving value for money in public procurement, normally through competition.

4.5.2. Evaluation and awards stage

The second stage in the bidding process is the evaluation and award of successful bids. In terms of the South African procurement system, the evaluation and award of

bids focuses on pre-qualification of bids, qualification of bids, consideration for national interest and public policy imperatives. In addition, threshold values or a monetary value of a procurement contract established in any legislation governing procurement or by the executive of an institution is part of the procedure to be used (CIDB, 2015:6). The evaluation and award of bids also considers the preference point system; evaluation of bids on functionality and price; evaluation of bids on functionality only; and disqualification of bids. The cancellation and re-invitation of bids, publication of the intended contract award and the awarded contract are also included in the stage dealing with evaluation and award of contracts, which is the second bidding stage.

The tender stage includes the invitation to tender, which is choosing which offeror will become the contract partner by evaluating the actual tender and the tenderer, and the award of a contract based on established terms and conditions for how the goods, services or works provided. It includes any conditions or limitations relating to the award, including agents and subcontractors that may have connections to government officials. In South Africa, bidders must meet certain criteria as set out in the procurement legislation and regulations (UNODC, 2013:4; RSA: National Treasury, 2015d: 18).

The preference point system is key in the administration of procurement practice as it addresses the past discriminatory policies and practices; the Procurement Act establishes a preference system for award of contracts (Bolton, 2006:208). The framework for implementation of preferential procurement policy determines that an organ of state must determine its preferential procurement policy and implement it within a preference point system. In terms of contracts with a Rand value above a prescribed amount, a maximum of 10 points may be allocated for specific goals as contemplated in the Act, if the lowest acceptable tender scores 90 points for price or for a contract with a Rand value equal to or below a prescribed amount. A maximum of 20 points may be allocated for specific goals as contemplated in the Act, if the

lowest acceptable tender scores 80 points for price (Ambe & Badenhorst-Weiss, 2012:242).

In order to ensure appropriate competition, the award of a public contract should only be made based on pre-disclosed criteria. This may be either the lowest price or a combination of the price with other criteria, such as the most advantageous or best value tender. Award criteria should be drafted in an objective way to ensure fair, impartial and non-discriminatory application. The weighting between criteria, and the manner of application for the criteria, must be set out in the tender documents, and non-price related criteria, such as time for delivery and extension of the minimum warranty period should be quantifiable, so that they can be assessed objectively and transparently. Good practice suggests that subjective criteria, such as the viability of a bidder's proposed staffing schedule, are best evaluated by a panel or commission, to reduce the risk of individual corruption and to gain the benefit of a consensus opinion (RSA: National Treasury, 2004c:41).

The bid stage permits the pre-qualification of bids. Pre-qualification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plant, specialised services and contracts to be let under turnkey, design-and-build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Pre-qualification may also be useful to determine eligibility for preference for domestic contractors, when appropriate. National Treasury (2017a:23) asserts that if an organ of state decides to apply pre-qualification criteria to advance the designated groups, that organ of state must advertise the tenderer with a specific tendering condition. A tenderer should have stipulated a minimum B-BBEE status level of contributor, be an EME (exempted micro enterprise) or a QSE (qualifying small business enterprise), and should be subcontracting a minimum of 30 percent of the work.

In terms of this new arrangement, a tender that fails to meet any pre-qualifying criteria stipulated in the tender documents should not be an acceptable tender. In terms of this stage, a bidder has to qualify to bid. A bidder may not be awarded a tender if:

- a) the bidder or its directors are listed as a company or persons prohibited from doing business with the public sector;
- b) the bidder fails to provide written proof from the South African Revenue Service that it has no outstanding tax obligations or has made arrangements to meet outstanding tax obligations (Davey & Gatenby, 2016:255).

All bid documentation must include the evaluation and adjudication criteria, including the criteria prescribed in terms of the PPPFA. Furthermore, an invitation to tender must indicate whether that tender will be evaluated on functionality and, in these scenarios, must also indicate the evaluation criteria for measuring functionality, the weight of each criterion, the applicable values and the minimum qualifying score for functionality. Functionality, price and preference (that is, in respect of B-BBEE status) should be weighted and assessed in the manner prescribed by the PPPFA and the Preferential Procurement Regulations (RSA: National Treasury, 2011b:5).

In terms of this framework, for a tender to be regarded as an acceptable tender and be considered further, it must achieve the minimum qualifying score for functionality as indicated in the tender invitation. Only tenders that meet the minimum functionality threshold should progress to evaluation in terms of price and preference. At that stage, the tenders should be assessed on the basis that, in contracts with a value of R1 million or less, price will count for 80 points and preference will count for 20 points; and in contracts with a value of more than R1 million, price will count for 90 points and preference will count for 10 points.

Bid points are applied on the basis that the bidder with the lowest price will achieve 80 or 90 points for price, depending on the contract value, with the price scores of the remaining bidders being determined relative to that of the lowest-priced bid by

employing the formula prescribed by the Preferential Procurement Regulations. The preference points, which are added to the points allocated in respect of price, are determined by having regard to each bidder's status in terms of the codes issued under the B-BBEE Act (Davey & Gatenby, 2016:256).

In the South African public procurement practice, the tender is awarded to the bidder scoring the highest number of points. It follows that the functionality of any given bid serves only as a gatekeeping measure, while the award of the bid to the ultimately successful bidder will be determined on the basis of how that bidder, once having passed the functionality threshold, scored in terms of price and preference. Once a tender award has been made it must be published in the Government Tender Bulletin and other media according to the means by which the tender was advertised (Davey & Gatenby: 2016:271).

Tenders may be evaluated only on the basis of the pre-disclosed requirements and criteria. The evaluation of bids should, as a general rule, be carried out not by a single individual but by a committee with the relevant technical and economic experience. If one individual does the evaluation alone, the resulting decisions are reviewed and approved by that individual's superior and non-responsive tenders must be rejected. Procuring entities should have the right to ask bidders for clarification of their tender as long as this is done in a non-discriminatory and transparent fashion. Changes to the bid after the deadline for submitting the bid should be prohibited (United Nations, 2013:21).

The national interest and the public policy imperatives or considerations are fundamental in the evaluation to bid. SMMEs play a vital role in growing the economy, creating jobs, and establishing capability to make South Africa competitive in global markets. Procuring entities must, through specialists, identify commodities and services that can be delivered through SMMEs (RSA: National Treasury, 2016c:8; Ambe & Badenhorst-Weiss, 2012:242). The National Treasury (2017a:27) asserts that the national Department of Trade and Industry must in consultation with the

National Treasury designate a sector, subsector or industry or product in accordance. Such consideration, which should be applicable in the event that locally, produced services or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content. Of course, economic and other relevant factors taken into account. To that end, a minimum threshold stipulated for local production and content considered. Subcontracting issues are also imperative in determining the local content.

Preferential procurement policies as indicated above used to promote substantive equality through the application of preferential treatment to designated groups when awarding government contracts. In addition to this, the dti (formerly known as the Department of Trade and Industry) may designate particular sectors in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods with a stipulated minimum threshold for local production and content considered in respect of government tenders. Where there is no designated sector, a specific tendering condition may be included to the effect that only locally produced services, works or goods or locally manufactured goods with a stipulated minimum threshold for local production. Additionally, the content will be considered, on condition that the prescript and threshold are in accordance with specific directives issued for this purpose by the National Treasury in consultation with the dti (Davey & Gatenby, 2016:258; Fourie, (2015) (<https://www.researchgate.net/publication>)).

The threshold is one of the criteria used in the bid evaluation and award process. The South African procurement regimen applies to contracts that meets certain threshold values. The structural threshold values exclude value-added tax (VAT), and updated by the National Treasury through procurement notices. The department/entity's procurement directives aligned to the threshold values for quotations and competitive bids as prescribed by the National Treasury. Because of the competitive process followed in public procurement, contracting parties may not conclude a contract that

is materially different from that specified in the initial call for bids. This means that no material amendments are permissible (Davey & Gatenby, 2016:257).

Preferential procurement strategy is critical for the success of achieving government broader procurement goals. The Accounting officer/authority should determine a strategy for the institution to achieve government's broader policy goals through the SCM process. They have to take into account aspects such as enhancing BEE and promoting HDIs, as required in the Preferential Procurement Regulations, 2004. The PPPFA prescribes that the lowest acceptable bid will score 80 or 90 points for price. Bidders that quoted higher prices will score lower points for price on a *pro rata* basis. The formulae to be utilised in calculating points scored for price are as follows: 80/20 Preference point system [(for acquisition of services, works or goods up to a Rand value of R1 million) (all applicable taxes included) (RSA: National Treasury, 2004c:27; 2017b:22–24; SANS 10845-1, 2015:22).

The evaluation of bids on functionality is also paramount to the evaluation and award process. All bids should be evaluated in terms of the 80/20 or 90/10 scoring models as prescribed by the PPPFA and its associated regulations. A bid is regarded as acceptable if it complies in all respects with the specification and conditions of the bid; the bidder has completed and signed all the prescribed bid forms to enable the principal to evaluate the bid submitted. In addition; the bidder has submitted the required original valid tax clearance certificate and other clearance/registration forms as prescribed by various acts and/or in the bid documentation; and the bidder has the necessary capacity and ability to execute the contract. The bid is awarded to the bidder scoring the highest points in respect of price and preference (RSA: National Treasury, 2003d; UNODC, 2013:21; Bolton, 2016:20–21).

The evaluation of bids can be processed based on functionality. Bids invited on the basis of functionality as a criterion are evaluated in two stages: functionality; and in accordance with the 80/20 or 90/10 preference point systems prescribed in the Preferential Procurement Regulations. Bids must be evaluated in terms of the

evaluation criteria embodied in the bid documents. The amendment of evaluation criteria, weights, applicable values, and/or the minimum qualifying score for functionality after the closure of bids is not allowed, as this may jeopardise the fairness of the process. A bid will be considered further if it achieves the prescribed minimum qualifying score for functionality. Bids that fail to achieve the minimum qualifying score for functionality must be disqualified. Score sheets should be prepared and provided to panel members to evaluate the bids. The score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation as indicated in the bid documents (RSA: National Treasury, 2011b:5, 14).

A bid can be disqualified during the evaluation and award stage. The service provider has to read the bid documentation and comply with all requirements. If the service provider does not submit all the necessary information, the bid may be disqualified. The service provider has to give all required personal and company information such as full names and identification numbers of all directors, and a company registration number. The service provider must submit a valid B-BBEE certificate from a B-BBEE accreditation agency (RSA: National Treasury, 2003d; Davey & Gatenby, 2016:255).

An organ of state may, prior to the award of a tender, cancel a tender if, because of changed circumstances, there is no longer need for the goods or services tendered for; or funds are no longer available to cover the total envisaged expenditure; or no acceptable tenders received. A bid can be cancelled and re-invitation of tenders effected based on certain compelling circumstances. An organ of state which has cancelled a tender invitation must re-invite tenders and must, in the tender documents, stipulate the preference point system to be applied (RSA: National Treasury, 2011b:5; 2017b:29; Davey & Gatenby, 2016:255).

After bid evaluation and ranking of bids, bidders should be promptly notified about the procuring entity's intention to award the contract to the successful bidder. No contract may be awarded to a person who has failed to submit an original tax clearance

certificate from the South African Revenue Service ('SARS') certifying the taxes of that person to be in order or that suitable arrangements have been made with SARS (RSA: National Treasury, 2004c:36; United Nations, 2013:22).

After the successful bidder has received the notice of acceptance, all other bidders notified that their tender offers have not been accepted. The notices rendered by post, telefax, electronically, or by publication of the successful bidder on the website of the organisation (SANS 10845-1, 2015:39). The successful bidder's contract numbers, description and preferences claimed, where possible the contract price, and brand names and dates for completion of the contract must be published on the website (RSA: National Treasury, 2003d; UNODC, 2013:22).

A conflict-of-interest policy provides guidance on what constitutes a conflict of interest and how potential conflicts can be managed, as well as what the due processes are for resolving an actual conflict (OECD, 2011:5). Public procurement practice in South Africa prohibits members of contracting authorities from holding private interests in contracts with that contracting authority. The PFMA requires supply chain management officials and other role players to 'recognise and disclose any conflict of interest that may arise'. In all tender processes, a bidder is required to complete and submit a declaration of interest form in which it is required to declare any relationship it may have with any employee of the state. Failure to submit this form generally results in disqualification (Davey & Gatenby, 2016:256, 270).

The consultancy services are also important in the administration of procurement practice in the South Africa. Consultants are required to provide professional, objective and impartial advice, and at all times hold, the client's interests paramount, without any consideration for future work. A firm hired to provide consulting services for the preparation or implementation of a project and any of its affiliates, should be disqualified from subsequently providing goods or works or services related to the initial assignment or the same project (RSA: National Treasury, 2003d). The South African public procurement regulations permit that, in procuring consulting services,

the Accounting Officer or Authority should satisfy him- or herself that the procedures used would result in the selection of consultants who have the necessary professional qualifications.

In the South African public sector, the framework agreements are called transversal procurement contracts. Framework agreements are arrangements for repeat purchases used, in particular, when entities do not know the timing or quantity of their requirements. They involve advertising the requirement and obtaining tenders, selecting a limited number of suppliers or even a single supplier as framework suppliers, and then placing orders with one of these suppliers or the single chosen supplier on a periodic basis, as the need arises. The procurement process for these contracts is conducted through a multidisciplinary and centralised approach through the OCPO, and involves stakeholders with a direct interest in the contracts. Transversal contracting is an important instrument enabling government at all levels to purchase goods and services from a central list of approved suppliers who have been vetted for cost and quality (RSA: National Treasury, 2015d:29–30, 46; Davey & Gatenby, 2016:253).

The PFMA recognises joint ventures with public-private partnerships (PPP) in the administration of procurement practice. Procurement from a joint venture in which a private party has a shareholding will generally require that a procurement process followed. Another method used; unless the appointment of the private joint venture partner (resulting in the acquisition of shares by the private party in the joint venture) occurred through a public procurement process and the contract between the joint venture and the contracting authority was specifically envisaged therein. The setting up of a public-private partnership (PPP) always requires a procurement procedure (Davey & Gatenby, 2016:254).

Foreign bidders are permitted to bid for tenders in South Africa. There is nothing prohibiting foreign suppliers from bidding. However, they do not normally qualify for a B-BBEE status and miss the associated preference points allocated under the

PPPFA. Foreign bidders may also struggle to meet minimum local content requirements where these apply.

It has been demonstrated in the section on the evaluation and award of contracts that the Bid Evaluation and Award committees should take the issues of procurement criteria, thresholds, and the points system into account. The above committees should satisfy themselves that the issues of conflict of interest, uncompetitive bids, and incorrect preferential point systems cleared during the evaluation process. The Committees should also determine whether the contracts are framework contracts, or whether bidders are from foreign countries and whether the bids involve joint ventures. The committees should clear all of these critical issues to avoid disputes in the award of such bids. The committees should display that they have capacity in terms of expertise to address these pertinent issues.

4.5.3. Contract performance stage

CIPS (2007:3) defines contract lifecycle management as the process of systematically and efficiently managing contract creation, execution, and analysis for maximising operational and financial performance and minimising risk. The last stage in the bidding process is the post-bidding stage, which focuses on contract management and administration; contract risk management; contract monitoring and evaluation; and auditing of the contracts. The post-tender stage or contract administration refers to the administration of the contract to ensure effective performance. Further interactions of many kinds between the successful bidder and governmental authorities continue during the course of contract performance, for example, regarding benchmarks, changing orders, payment schedules, licensing and permits (UNODC, 2013:5). Contracts or service level agreements must not contain requirements and conditions not included in the bid documents but should contain sufficient information to enable the suppliers to deliver goods or services of the correct description, quality and quantity within the specified time (RSA: National Treasury, 2015d: 19).

In terms of the South African public procurement legislation, the Accounting Officer/Authority of the department/entity must take all reasonable steps to ensure that a contract or agreement procured is properly enforced. In addition; monitor on a monthly basis the performance of the contractor or service provider under the contract or agreement; and establish capacity in the department or entity to oversee the day-to-day management of the contract or agreement (SANS 10845-1, 2015:40).

After approval of a bid, both parties should sign a written contract or, if necessary, a service level agreement. The person responsible for the administration of the contract or an order on behalf of the employer should act as stated in the contract entered into, subject to any constraints imposed by the employer or the employer's supply chain management policy. The state of affairs is applicable for infrastructure procurement and delivery management, using any standard templates provided for communications required in terms of the contract (RSA: National Treasury, 2015d: 31). Original/legal copies of contracts kept in a secure place for judicial reference. Contract administration, including monitoring of socio-economic objectives as undertaken by the supplier during the bidding stage, is the responsibility of the Accounting Officer/Authority. The contract concluded with the organ of state must be legally sound with regard to the signed contract, which should comply with the general condition of contract issued by the National Treasury (RSA: Western Cape Provincial Treasury, 2012c:32).

The contract management practice by the supply chain management system unit includes the following: recording of the contract in the contract register; monitoring and regular reporting on contracts and evaluation of compliance with transversal contracts in which the organ participates. The organ of state has to ensure that assessment of suppliers' or service providers' performance is undertaken and should be available for future references. Such an assessment must include the reliability of the supplier or services provided in terms of delivery periods, quality and quantity (RSA: National Treasury, 2004c:47).

South African public-sector procurement practice considers risk management an essential part of the procurement lifecycle in that it is a good mechanism to counter procurement fraud and corruption. It is imperative for accounting officers/authorities to take cognisance of potential risks during the supply chain management process. Risk management should therefore form part of the business plan for the acquisition of all goods and services (Migiro & Ambe, 2008:233; RSA: National Treasury, 2003d:23). Internal Audit and Risk Management units will be directed to conduct an audit on demand plans and procurement plans; audit performance of supply chain units regularly; and audit and report on continuous improvements (RSA: National Treasury, 2016c:6). Risk registers must be established and maintained to enable risk mitigation relating to infrastructure procurement and delivery management proactively managed at a portfolio, programme, and project and contract level. An annual performance report must be prepared for each portfolio of projects involving infrastructure delivery within two months of the financial year-end, which reflects performance (RSA: National Treasury, 2015d: 37–38). Leadership in the organs of state and entities should assess supply chain management performance to determine whether the set goals are being achieved (RSA: National Treasury, 2003d:23; 2004:11; Migiro & Ambe, 2008:233; Van Weele, 2010:302–303).

The study demonstrated that contractual relationships could play a central and fundamental part in the delivery administration of procurement practices. Suppliers' actions are often critically important, and when things go wrong, the failure can be expensive in human, financial and reputational terms. Good management of the operational phase of the procurement is therefore key to successful service delivery. The achievement of goals, compliance with norms and standards, savings generated, store efficiency, cost variance per item, contract breach, and cost efficiency of the procurement process should be part of performance monitoring.

4.6. Remedies and enforcement

The procedure to seek remedies and enforce ethical procurement practices by suppliers is ordinarily applicable for challenging procurement decisions as prescribed in the PAJA (Act 3 of 2000) (RSA, 2000e). Prior to instituting judicial review proceedings, it is required that an applicant should first exhaust any internal remedy provided for under any other law (Davey & Gatenby, 2016:259; UNODC, 2013:23). The PAJA allows 'any person' to institute proceedings to review administrative action taken by an organ of state (Davey & Gatenby, 2016:260–261).

The World Bank (2016:34–35) propagates that establishing a good complaint mechanism has become a key element of any procurement reform agenda. National Treasury (2017b:29–30) alludes to the fact that in the event that an organ of state detects that a tenderer has submitted false information regarding its B-BBEE status level of contributor, local production and content, or if the tenderer has failed to declare any subcontracting arrangements, certain remedies should be applied. However, a bidder must declare that the information provided is true and correct; the signatory to the tender document is duly authorised; and documentary proof regarding any tendering issue will, when required, be submitted to the satisfaction of the relevant organ of state (RSA: National Treasury, 2011b:10–11).

The institution may, in addition to any other remedy that it may have against the bidder or person, disqualify the bidder or person from the bidding process, recover all costs, losses or damages it has incurred or suffered because of that person's conduct, and cancel the contract. In addition, the procurement authority can claim any damages suffered. The procurement authority should inform the tenderer accordingly; and give the tenderer an opportunity to make representations within 14 days as to why the tender should not be disqualified or penalised, and be restricted from conducting any business with the state. The bidder or contractor and its shareholders and directors can be restricted from obtaining business from any organ of state for a period not exceeding 10 years. As part of the condonation process, accounting

officers or authorities are required to provide proof to the OCPO that the appropriate action has been taken against any official who has been found negligent or non-compliant with the SCM process (RSA: National Treasury, 2004c:45; 2011b:10–11, 19–20; 2016).

In the light of the above analysis, it can be argued, that the identification of needs, market intelligence, tender specifications, evaluation and award of bids, and contract management are key in the administration of procurement practices. Firstly, careful identification of requirements makes the procurement more likely to be successful. The definition of needs requires an appropriate investment in time. The amount of time involved in successful cases of procurement is likely to be large, especially in complex products. It has been demonstrated that one major requirement for procurement is market intelligence, which has various functions, namely: understanding what the market can deliver now, and in the future. Such intelligence and interaction enable the procurer to obtain early feedback on the feasibility of the project. Key aspects in drawing up tendering specifications include specifications of needs, tender structure, defining the ability of possible suppliers, and management of risk. The specifications on needs should take into account criteria for the capabilities of potential suppliers, acquired through market intelligence.

The study unfolded the information that when assessing and awarding tenders; the procuring authority has to exploit all the intelligence gathered. The bid committee needs competencies in evaluating the technical, operational and economic requirements defined in the contract award criteria. The need for high technical and evaluation skills becomes imperative when the evaluation criteria include qualitative and technical parameters.

The study has shown that managing contract delivery provides important opportunities for gathering information and conducting evaluative analyses in order to draw lessons for future projects. The state of affairs will depend on making good opportunities critically upon the approach taken to monitoring and evaluation.

Contract monitoring and evaluation must go beyond simply determining whether the project was completed according to the terms agreed, and should address broader issues such as the impacts on market and on policy. Contract management should also include risk and auditing of the contract or project's success or failure.

4.7. Conclusion

This chapter has demonstrated that the administration of procurement practices is a multifaceted process, which involves the procurement regulation, procedures, bidding processes in terms of the tender specifications, tender evaluation, and award and contract management. The administration of procurement practices will be guided by effective application of the procurement procedures as articulated in the procurement legislation. In addition, needs assessment, as well as market research and intelligence, are important issues in the administration of procurement practices. Appropriate tender specifications and proper tender documentation can improve the administration of procurement practices. The issues of e-procurement and effective advertisements in the Government Tender Bulletin and website will enhance transparency, provide competition, and thereby increase value for money in the administration of procurement practices.

The use of prescribed thresholds, predetermined criteria, and point systems without discrimination will eliminate unethical procurement practices. The evaluation and awards of tenders based on quality and professional expertise will eliminate the scope creeping into the administration of procurement practices and thus increase quality in infrastructure development and other goods and services. The monitoring and evaluation of the effectiveness of contract management, determination of risks and planned audits of procured projects will improve value for money and eliminate unethical behaviour in the administration of procurement practices. Remedies and enforcement of procurement rules are the basis of the procurement administration and practised without fear and discrimination. Lessons distilled from this chapter demonstrated.

There are procurement legal provisions and institutional arrangements in the administration of procurement practices that offer opportunities to national departments to consider them effectively in decision-making, and to ensure that the principles as enshrined in the Constitution relating to accountability, value for money, transparency, and equity practised and effectively adhered to. This suggests that the importance of having in place a supportive legal and institutional framework that national departments can rely on to demand accountability and ethical conduct successfully is paramount.

Given the procurement legal provisions, the chapter has illustrated that access to information or e-procurement at the national departments is imperative. National departments have to ensure that in order to administer procurement practices effectively and efficiently, they should unblock available channels of communication through e-procurement and use of websites for easy access to information by tenderers.

This chapter further demonstrated fundamental procurement administration processes as will be outlined hereunder. The preference point system is key in the administration of procurement practice as it addresses the past discriminatory policies and practices. The national interest and the public policy imperatives or considerations are fundamental in the evaluation to bid. A conflict-of-interest policy provides guidance on what constitutes a conflict of interest and how potential conflicts managed. Contracts must not contain requirements and conditions not included in the bid documents. South African public-sector procurement practice considers risk management an essential part of the procurement lifecycle. Contract management, monitoring and evaluation are inadequate in the administration of procurement practices in South Africa. The procurement procedure seeks remedies and enforce ethical procurement practices by suppliers, which is applicable for challenging procurement decisions as prescribed in the PAJA.

CHAPTER 5: MANIFESTATION OF UNETHICAL PROCUREMENT PRACTICES IN DEPARTMENTS

5.1. Introduction

The previous chapter focused on procurement practices as they relate to procurement procedures, remedies, and enforcements in the South African public sector. Chapter 5 seeks to address the study objective, the manifestation of unethical procurement practices in the public sector. This section will focus on the national departments of the seven case studies, categorised under the government guide on the social protection, community and human development government cluster. The selected department are National Cooperative Governance and Traditional Affairs (CoGTA), National Department of Rural Development and Land Reform (DRDLR), National Department of Public Works (DPW), National Department of Basic Education, National Department of Human Settlements (DHS), National Department of Social Development (DSD), and National Department of Water and Sanitation (DWS).

The administration of procurement practice is impacted by unethical procurement practices. The state of affairs makes it difficult to administer the procurement practices in the South African public sector. Non-compliance with key legislation remains of concern to procurement practices. In evaluating the nature, extent and size of unethical procurement practices, it was crucial to find a way of distinguishing between addressable and available resources to inform the study in terms of the total potential audience for sourcing that information. The study considered two primary factors to consider in evaluating the unethical procurement practices namely: the demographic criteria relevant to this study and determining the number of national departments in the protection, community and human development cluster. The assessment of the levels of generating unethical procurement practices information from national departments was followed. It is without doubt that, before commencing with the study, it was imperative to determine the nature, extent and cost and

dissemination of unethical procurement practices, the study one needs reliable statistics which was unfortunately did not come easily.

The resources that offer reliable figures to assist in assessing the nature, extent and size unethical procurement practices. SIU is a valuable source for information about the nature and size to can help calculate the size and cost as will be available from annual investigation reports. The AGSA is a good resource for learning about the audit outcomes reports regarding the unethical procurement practices in national departments from 2010/11-to 2015/16 financial years. The AGSA gathers huge volume of information from national departments. The PSC monitors performance of national departments and thus provides statistics and information that can be valuable when determining the nature, extent and cost of unethical procurement practices and data from internet can be used to assess the nature, extent and cost of unethical procurement practices.

Certainly, by reviewing the unethical procurement trends, the study can assess the growth of unethical procurement practices and determine if there is fertile ground for unethical procurement practices. The analysis of the nature and extent of unethical procurement practices, its causes, and its costs will also be central to the chapter. Non-compliance with supply chain management legislation in the case study national departments will be analysed. The chapter will be concluded by the analysis on the manifestation of unethical procurement practices in national departments.

5.2. Unethical procurement practices

There is a growing belief that unethical procurement practices such as procurement fraud and corruption can have a negative impact on the country's economic development as a large amount of expenditure takes place in the procurement environment. It is therefore imperative that public-sector managers made aware of the ramifications of unethical procurement practices applicable in the procurement

environment. Based on the above, this study will highlight pertinent issues relating to unethical procurement practices in this section.

In the public sector and private sector organisations, unethical procurement practices can undermine development. An important concern in good governance is financial mismanagement and corrupt officials, because they stifle development goals. Corruption sets in when public officials, for example, paid rent in order to circumvent restrictions in terms of quotas, import restriction or exercise duty, to secure a contract, to permit a monopoly over a contract, or to limit competition (Fourie, 2009:632). Guile (2013) (<https://www.cips.org/supply-management>) and Caulfield (2010:8-9) assert that many frauds committed fall within the banner of procurement fraud as most companies obtain products or services through some form of procurement exercise. Human weaknesses may contribute towards unethical procurement practices. Some people would find it difficult to reject from a person of a generous nature (Voskanyan, 2000:20).

McNamee (2016:6) contends that in order to prevent and reduce fraud losses adequately, one needs to know, the definition of fraud, the specific types of fraud, and how fraud perpetrated. Procurement fraud can take place at all points in the procurement or decision-making process in order to ensure that a specific vendor awarded the contract (Vona, 2011:179).

5.2.1. Theory of unethical procurement practices

Thornhill, Van Dijk and Ile (2014:303) define corruption as the situation where “person A provides person B in a position of power with something (called a gratification) in order to use that power, illegally and unfairly, to the advantage of B”. Fraud can be perceived as deception. Fraud in the form of intentional deception, including lying and cheating, is the opposite of truth, justice, fairness, and equity. Kinyanjui (2015:3), Kalubanga, Kakwezi & Kayiise (2013:18), and Smith, Button, Johnston & Frimpong (2011:14), assert that fraud is an intentional deception made for personal gain or to

damage another individual or entity, with the intention of depriving another of his right, or deceit, or an intention to deceive or in some cases merely secrecy. Secondly, fraud is either actual injury or possible injury or an intent to expose some person either to actual injury or to risk of possible injury by means of that deceit or secrecy, misrepresentation of the truth. In addition it is the concealment of a material fact to induce another to act to his detriment, and omission, or perversion of truth, to gain unlawful or unfair advantage, including persuading another to part with some valuable item or surrender a legal right.

Fraud involves deliberate misrepresentation of facts and/or significant information to obtain undue or illegal financial advantage. It may be internal, that is, originating from within the organisation; or external, that is, involving customers, suppliers, or other third parties (Stamler, Marschdorf & Possamai, 2014:17; OECD, 2011:5). The National Development Plan (2013b:446) defines corruption as the misuse of an official position for personal gain and occurs in both public and private sectors. Mawenya (2008:2) and Afoakwa (2012:2–3) propagate that fraud and corruption take place when clients' official agents or representatives entrusted with procurement collude with suppliers and contractors and break the law in pursuit of personal interests. Their actions involve bribery, kickbacks, collusion, bid rigging, and fraud. Corruption involves effort to influence and/or the abuse of public authority through the giving or the acceptance of inducement or illegal reward for undue personal or private advantage (OECD, 2011:5).

Vona (2011:179) states that procurement fraud is fraud in respect of the purchasing decision-making process in order to ensure that a specific vendor is awarded the contract through violations of the bidding process when private companies solicit contracts from public agencies (Doody, 2010:12). Unethical practice or procurement corruption can be bureaucratic or political; cost reducing to the briber or benefit enhancing; briber initiated, or bribe initiated; coercive or collusive; centralised or decentralised; and predictable or arbitrary, whether inducing cash payments or not. Corruption is an act in which the power of public office used for personal gain in a

manner that contravenes the rules of the game. Corruption is also the sale by government officials of government property for personal gain. Power is the ability to influence the behaviour of people. In public procurement, abuse of power can lead to a secret vertical relationship between one or more bidders and the procurement official that materialises into a conflict of interest, bribery, or kickback (Rose-Ackerman & Søreide, 2011:143).

Procurement fraud and corruption may be categorised into three main forms, namely: incidental (individual); institutional (for example, the National Department of Human Settlement); and systemic (societal). Corruption can take the form of an isolated occurrence or systemic occurrences. Corruption in a society may be rare or widespread. Where systemic corruption exists, formal and informal rules are at odds with one another, bribery may be illegal but understood by everyone to be routine in transactions with the government (Robinson, 1998:2–3).

A systemic corruption ‘trap’ can prevail in which the incentives are strong for bidders, individuals, and officials to comply with and not fight the system. Where corruption is systemic, the formal rules remain in place, but superseded by informal rules. It may be a crime to bribe a public official and in practice, the law is not enforced or applied in a partisan way, and informal rules prevail. Government tender boards may continue to operate even though the criteria by which contracts awarded have changed. Seen in this light, strengthening institutions to control corruption is about shifting the emphasis back to the formal rules. This implies acknowledging that a strong legal framework to control corruption means addressing the sources of informality by understanding why the informal rules are at odds with the formal rules and then by tackling the causes of divergence (Rose-Ackerman & Søreide, 2011:149–150).

In order to address ‘procurement fraud properly,’ attention needs to be focused on the entire procurement process. A necessary understanding developed, and critical analysis undertaken of those hot spot areas of the procurement process that are

prone to fraud. The definition of unethical procurement practices will form a building block for the public procurement managers in understanding the procurement practices environment and putting it into perspective.

5.2.2. Nature of unethical procurement practices

Procurement fraud and corruption can include (among others) taking bribes in return for issuing licenses; accepting a kickback for granting a defence contract; not enforcing rules and regulations in exchange for a payment (World Bank, 2016; Aidt, 2011:15; Tanzi, 1998:10). Albrecht, Albrecht, Albrecht., & Zimbelman (2012:11) and Comer (2003:4–5) propagate that the types of fraud schemes affecting a national department will depend highly on that department's nature, size, and structure.

Unethical procurement practices such as procurement fraud; bid rigging; kickbacks; collusive bidding by contractors; change of order abuse; co-mingling of contracts; conflict of interest excluding qualified bidders; failure to meet contract specifications; and false inflated or duplicate invoices are fundamental in the procurement environments. In addition, false statements and claims; petty cash fund abuse; leaking of bid information; manipulation of bids; fictitious vendors; product substitution; purchases for personal use or resale; rigged specifications; split purchases; unbalanced bidding; bribery; unjustified sole-source awards; and unnecessary purchases are part of the list (Smith, 2015:13; Kramer, 2012)(<http://iacrc.org>). Procurement irregularities and non-compliance with legislation in the procurement environment can also fit into the list. Unethical procurement practices can occur at any stage of procurement processes, from pre-tendering, to tendering, and to post-tendering processes. It can be perpetrated by contractors or sub-contractors external to the organisation, as well as staff within the organisation.

The PwC *Global Economic Crime Survey 2014* revealed that 29 percent of the organisations had experienced procurement fraud. In South Africa, vendor selection was the step in the procurement process targeted most by fraudsters, although all

steps appear to be vulnerable to fraud. The sectors that reported the most procurement fraud were public entities, followed by energy, utilities and mining; engineering and construction; and transport and logistics (PwC, 2014b:12).

The nature of procurement fraud differs between the two core stages of the procurement lifecycle: pre-contract award and post-contract award. Fraud in the pre-contract award phase is complex, often enabled by a lack of compliance with policy, but also involving activities such as collusion and corruption, which can be difficult to detect. Fraud in the post-contract stage is considerably different. As contracts are already in place, most cases of fraud tend to involve overpayments to contractors, through false or duplicate invoicing, and payments for substandard work or work not completed under contract terms. Sharp practice and unlawful activity can also be present in the margins of post-contract award fraud. Examples of this include overpricing for goods or services (National Fraud Authority, (2011) (<http://www.cips.org>). Client officials and representatives may bend procurement rules to favour preferred bidders in exchange for kickbacks and bribes. During the contract implementation, client officials and representatives may demand bribes and kickbacks in order to grant contract variations, approve extensions, certify defective work, or expedite payments (Mawenya, 2008:2).

In addition, the study identified, uncompetitive or unfair procurement processes, inadequate contract management, lack of documentation to the awards, awards to close family members of employees and to employees of government institutions as unethical procurement practices(RSA:AGSA,2012a:83-90). However, the majority of cases reported and commented points to corruption, fraud, financial mismanagement, theft, misappropriation and abuse and gross negligence. Since public procurement is a sub field of public finance, the recorded unethical financial misconduct is undoubtedly closely related to procurement practices.

Table 5–1: Nature of unethical procurement practices

Nature	2013/14	2014/15	2015/16
Uncompetitive or unfair procurement processes	222	226	247
Inadequate contract management	63	79	70
Awards made to employees	36	27	29
Awards to close family members of employees	39	47	51
Supplier did not declare interest	-	26	36
Employee did not declare interest	-	26	16
Internal control inadequacy	301	287	308
Poor document management	41	32	30

Source: South Africa, Republic (RSA). Auditor General AGSA (2014a, 2015a, 2016b). Consolidated general report on the national, provincial and public entities audit outcomes 2013/14, 2014/15 and 2015/16.

Table 5–1 reflects common issues for the financial years 2013/14 to 2015/16 relating to the nature of unethical procurement practices relating to uncompetitive bidding, unfair procurement processes, inadequate contract management, awards to employees and close family members of employees, suppliers did not declare interest, internal control inadequate and poor record and document management.

Table 5–1 illustrates that there were 222 cases of uncompetitive or unfair procurement processes in the financial years of 2013/14, 226 cases in 2014/15 followed by 247 cases in 2015/16 (RSA: AGSA, 2016b:41). The illustration reveals 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 (RSA: AGSA, 2014a:18, 47, 86,157).

Awards made to employees amounted to 36 cases in the financial years of 2013/14, 27 cases in 2014/15, and 29 cases in 2015/16. Awards to close family members of employees identified as 39 cases for 2013/14, 47 cases in 2014/15, and 51 cases in 2015/16. Cases where the supplier did not declare interest was as follows for the

financial years 2014/15, 26 cases, and 2015/16, 36 cases. Cases where employees did not declare interest: 26 cases in 2014/15 and 16 cases in 2015/16. The RSA: AGSA (2016b:41) posit that failure by suppliers to declare the interest of employees and other state officials constitutes an unethical procurement fraud practices.

Khumalo, Nqojela & Njisane, (2011) (<http://www.casac.org.za>) propagate that tendering procedures are designed to promote competition and limit discrimination in procurement processes. There is a link between corruption and conflict of interest in this study is 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 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 abused for private gain. In a non-corrupt case of public procurement, nowhere in the procurement process any power been abused for private gain (PwC and Ecorys, 2013:58). Awards 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) assert that corruption takes place when client officials entrusted with procurement collude with suppliers and contractors and break the law in pursuit of personal interests.

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 viewed as opportunities for real change and fundamental improvements, and public procurement reform lies at the heart of this opportunity (World Bank 2012:6). In this case, the non-compliance 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, 2014/15 with 287 cases and 2015/16 with 308 cases (RSA: AGSA, 2014a; 2015a; 2016b).

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, 2015d: 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 found in the study.

For the financial years 2013/14, 41 cases of poor document management or no supporting documents, in 2014/15, 32 such cases identified. In the financial year, 2014/15 there were no recorded cases, followed by 30 cases in the financial year of 2015/16. The prevailing findings related to instances where there was no or inadequate contract performance measures, monitoring, and contracts amended or extended without proper approval (RSA: AGSA, 2013a: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 (RSA: AGSA, 2013a:70; 2016b:42).

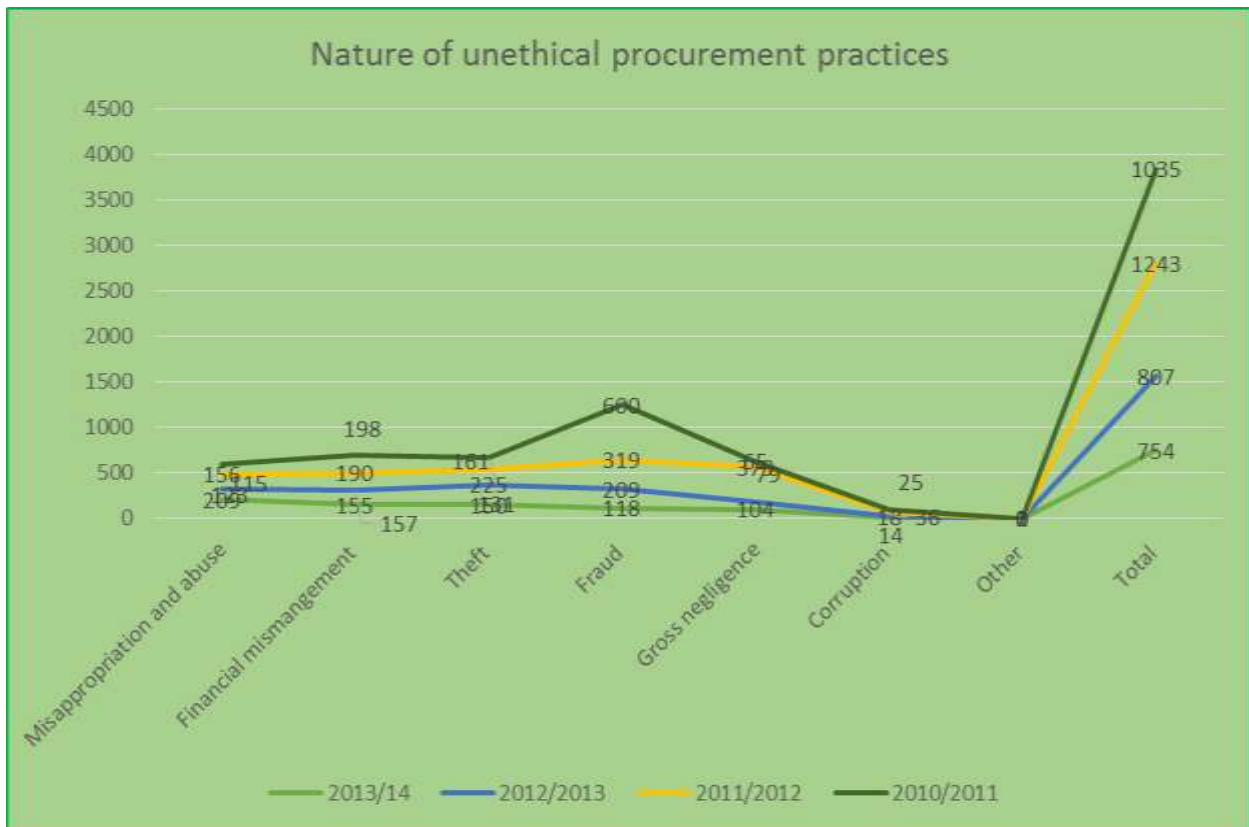
This study revealed the nature of general unethical financial misconduct as illustrated on table 5-2 and figure 5-1. In the past four financial years (2010/2011, 2011/2012, 2012/2013 and 2013/2014), the highest number of unethical cases was reported in 2011/2012 financial year (1243 cases) and the lowest number of cases was reported in the 2013/2014 financial year (754 cases) (RSA: PSC, 2015g: 13).

Table 5-2: Nature of general unethical procurement practices

Nature	2010/2011	2011/2012	2012/13	2013/14
Misappropriation and abuse	115	156	123	209
Financial mismanagement	198	190	157	155
Theft	131	161	225	150
Fraud	600	319	209	118
Gross negligence	65	379	79	104
Corruption	25	36	14	18
Other	1	2	0	
Total	1135	1243	807	754

Source: South Africa, Republic (RSA). PSC. 2012b, 2013e and 2015g. Factsheet on finalised cases of financial misconduct for the 2011/2012, 2012/13, 2013/14 financial years.

Figure 5-1: Nature regarding general unethical financial practices



Source: South Africa, Republic (RSA). PSC. 2012b, 2013e and 2015g. Factsheet on finalised cases of financial misconduct for the 2011/2012, 2012/13, 2013/14 financial years.

However, there was scarcity of information regarding cases of unethical financial conducts for the period 2014/15 and 2015/16 and provision of such reports dwindled.

5.2.3. Causes of unethical procurement practices

There are factors prevailing in the public sector regarded as factors causing unethical practices. Inadequate control and accountability, inadequate procedures and manuals and physical factors. For examples, if control is ineffectual, dishonest officials can exploit the situation for their own benefit temptation (Van Der Waldt & Du Toit, 1999:48–50). The organizational mechanisms implemented to introduce accountability. The implementation of complicated legislation may leave room for unethical an ineffectual conduct. The procedures officials have to follow can at times conflict with what officials' experience in practice. Officials are fallible by nature and inclined to crave power and money to varying degrees. When the right conditions created, expected that people vulnerable to temptation (Van Der Waldt & Du Toit, 1999:48–50).

Any anti-competitive practices in a procurement process, such as collusion, bid rigging, or fraud, could lead to artificially raised prices and consequently could adversely impact public expenditure and precious national resources (Pedneault, 2009:20; Brown, 2010:31; Coenen, 2008:10–13). The public sector's unethical public procurement practices in the South African context exacerbated by the complex nature of the supply management system, which is currently applied. There is a lack of accountability, and the public sector frequently underestimates how important supplier management is. There is limited understanding about how public-sector decisions and actions affect the overall business environment, and suppliers often take advantage of the current weak public-sector procurement management environment (RSA: National Treasury, 2015d: 5).

The soft-state syndrome may cause corruption in a country. In a soft-state environment, citizens indicated to have a weak or diffuse sense of national interest

and do not have a commitment to public service. The absence of efficiency and a professional, competent, and committed bureaucracy is an important contributor to bureaucratic corruption in countries. Public servants may view public service as an opportunity for self-enrichment. To this end, national elites could turn state structures into instruments of plunder, which they would use to extract benefits themselves and their families, impoverishing and marginalising the general populace (Mbaku, 2000:36; 2007:37, 41).

The causes of corruption are always contextual, rooted in a country's policies, bureaucratic traditions, political development, and social history. Procurement fraud and corruption tends to flourish when institutions are weak and government policies generate economic rents. Tanzi (1998), Rose-Ackerman (1999) or Jain (2001), as cited in Aidt, (2011:15) recognise three conditions necessary for corruption in the public sector to arise and persist:

- (i) *Discretionary power*: The relevant public officials (bureaucrats, politicians, and others) must possess the authority to design or administer regulations and policies in a discretionary manner;
- (ii) *Economic rents*: The discretionary power must allow extraction of (existing) rents or creations of rents that can be extracted; and
- (iii) *Weak institutions*: The incentives embodied in political, administrative and legal institutions must be such that public officials left with an incentive to exploit their discretionary power to extract or create rents.

Procurement fraud and corruption alternatively seen as signs that something else more fundamental is wrong. Feedbacks from economic conditions to corruption are usually also acknowledged as being important because they affect the presence or absence of economic rents. Social interaction viewpoints emphasise that corruption is the outcome of self-reinforcing social processes and downplay the causal role of institutions. For example, corrupt colleagues are less likely to report that one is corrupt than honest colleagues simply because corrupt colleagues do not want to risk

triggering an internal and external inquiry. The incentive of any one individual to accept a bribe is obviously stronger when the likelihood discovered is lower. Combining these plausible assumptions, two types of stable situations can emerge: one in which no one takes bribes because anyone who does would be reported and punished, and one in which everyone take bribes because no one will ever be reported and caught (Aidt, 2011:16).

Manyaka and Nkuna (2014:1574) propagate that the causes of corruption are among others weaker application of the legislation and oversight mechanisms and insufficient political will. In countries in which corruption has become pervasive, the cost of public goods is highly inflated, usually to provide additional income for those whose job it is to serve the public (Mbaku, 2000:71–72). Dorotinsky and Pradhan (2007), as well as Paterson and Chaudhuri (2007), cited in Fourie (2015) (<https://www.researchgate.net/publication>), propagate that the prevalence and style of corruption in public-sector procurement varies considerably between countries, and they affect society on various levels. Procurement fraud and corruption jeopardise the ability of governments to achieve their agenda; affect spending on priority sectors such as education and health; and can have a damaging impact on economic growth. In addition to the above indicators, the ethical values of a well-performing bureaucracy eroded or never established.

Kanyane (2014:9) states that unethical practices have many faces and changing manifestation be it political, economic, social, cultural, and technological. Public officials entrusted with procurement can attribute procurement fraud and corruption in public procurement to a combination of socio-economic factors such as bad governance, manifested by lack of transparency, weak accountability, and lack of integrity. Officials often violate regulations and procedures with impunity (Mawenya, 2008:3).

5.2.4. Size and cost of unethical procurement practices

In South Africa the size and cost of procurement fraud and corruption has not received attention and been documented properly. However, the National Treasury (2015d:4) contends that South Africa loses about R25 billion every year to fraud in government procurement relating to textbooks not arriving on time at schools, shoddily built RDP houses, and tender rigging. Service delivery protests are a sign that people feel that they are not receiving the quantity or quality of services they need. Schools sometimes open at the start of the year without learner support materials. In addition, the Special Investigating Unit (SIU) estimates that 20 to 25 percent of state procurement, representing approximately R180 billion, is lost each year due to corruption. The Consumer Goods Council (2006) and Corruption Watch (2013) in Manyaka and Nkuna (2014:1576–1577) allude to the fact that South Africa loses between R50 billion to R150 billion annually because of fraud and corruption.

The direct costs of corruption include loss of public funds through misallocations or higher expenses and lower quality of goods, services, and works. Those paying the bribes seek to recover their money by inflating prices, billing for work not performed, failing to meet contract standards, reducing quality of work, or using inferior materials, in the case of public procurement of works. This results in exaggerated costs and a decrease in quality (Pickette & Pickette, 2002:4).

Unethical public procurement practice such as procurement fraud and corruption is viewed the biggest threat to South Africa's democracy (Maharaj & Karodia 2013:45). From national government through to provincial, local and municipal spheres, a culture of fraud and entitlement is widespread, and the fact that it is endemic is apparent. Seemingly, public procurement fraud and corruption is an extensive problem that affects virtually every organisation (Opperman 2014:8). Marko Vogler, chief executive and founder of South Africa-based The Fight Against Corruption and alliance partner to tendering tool supplier Sentigol, estimates around 20 percent of the government's annual procurement budget of R150 billion (£13 billion) is lost to

fraud. It is contended that much of the loss manifests from rip-offs, overpricing, tender rigging, and manipulation (Martindale, (2010) (<http://www.supplymanagement.com>)).

Albert, (2011)(<https://www.cips.org/supply-management>) alludes to the fact that the former Minister of Finance during his budget speech to Parliament in 2011 conceded that taxpayers are not getting value for money from public procurement and said that he believed government was losing billions of rand in maladministration. The Minister projected 53 investigations involving procurement “irregularities” in the public sector. In monetary value, this relates to contracts worth R3 billion (£260 million). He stated that the Department of Justice reported 65 people linked to the above investigations brought before the courts at that time. Albert, (2011) (<https://www.cips.org/supply-management>) suggests that more than R250 million (£21.6 million) has been seized by the government. The South African Revenue Service (SARS) also investigated nine cases of tender fraud, with a total value of approximately R1.7 billion (£147 million) (Albert, (2011) (<https://www.cips.org/supply-management>); RSA: National Treasury, 2015f).

There was also a lack of government oversight when those stadia built. Allen, (2010) (<http://www.supplymanagement.com>) states that the estimated taxpayer bill for stadiums, rail links and other projects apparently skyrocketed from \$310 million (£206 million) to approximately \$2.4 billion (£1.6 billion) (Allen, (2010) (<http://www.supplymanagement.com>); Pan, Seow, Suwardy & Gay, 2011:140). There has been very little monitoring for competitive bidding for lucrative stadium construction contracts. Price-fixing was also prevalent in the steel industry, which led to significant cost increases in the building of the arenas and other infrastructure (Mantzaris & Pillay 2013:177–178). The above cost were made available by various sources and not consistent for the past four years. however, the following figures show a trend in terms of how the unethical procurement practices trended since 2010/2011 financial years. Table 5–3, 5–4, 5–5 and figure 5–2 show the cost of unethical practices regarding four financial years. The amount involved according to

Table 5–3 is shows an R1.5 billion which could have been used to build roads and other amenities.

Table 5–3: Cost of general unethical procurement practices

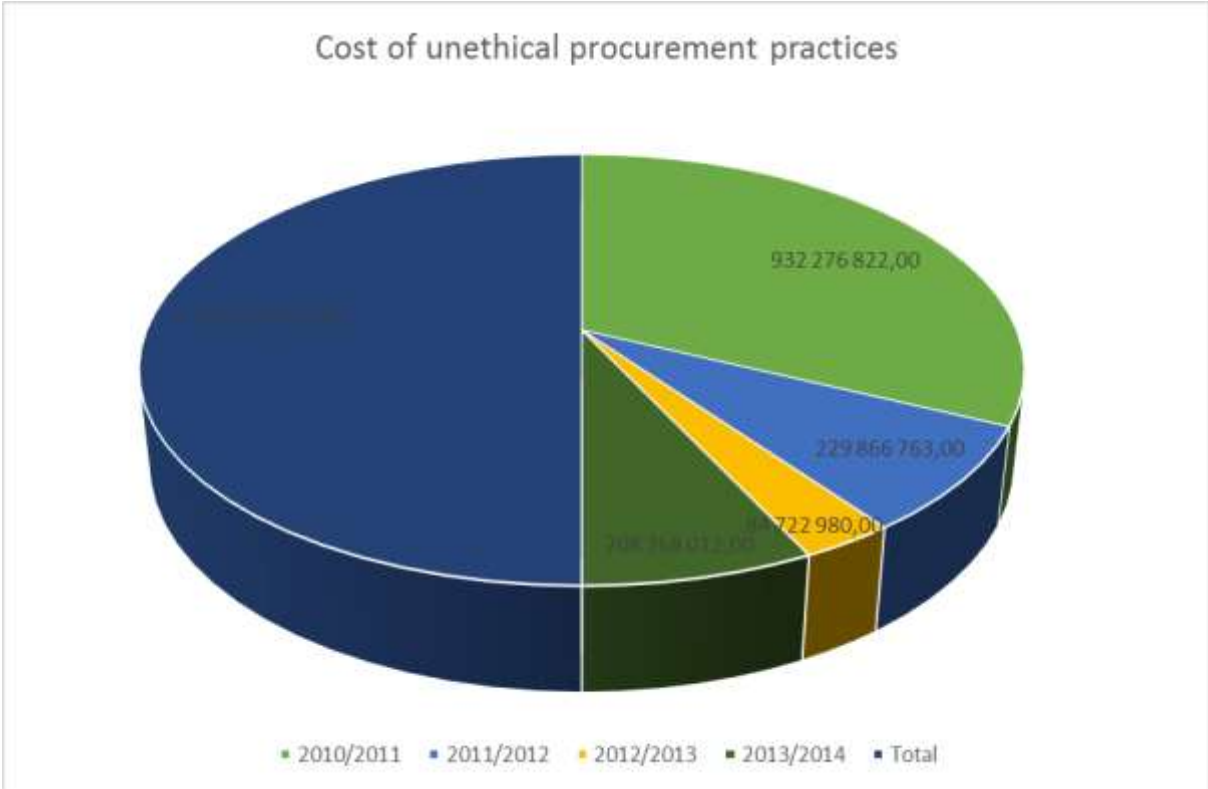
Financial year	Cost R'000
2010/2011	932 277
2011/2012	229 867
2012/2013	84 723
2013/2014	208 268
Total	1 455 135

Source: South Africa, Republic (RSA). PSC. 2012b, 2013e and 2015g. Factsheet on finalised cases of financial misconduct for the 2011/2012, 2012/13, 2013/14 financial years.

Table 5–3 and figure 5–2 show that there has been a 146 percent increase in the amount of money involved in financial misconduct cases reported for the 2013/2014 financial year in comparison to the 2012/2013 financial year i.e. from R84 722 780.68 (2012/2013) to R208 268 012.35 (2013/2014) (RSA : PSC,2015g: 16). They show that the highest amount involved in financial misconduct was reported in the 2010/2011 financial year at R932 276 821.66. The lowest amount involved in financial misconduct was reported in the 2012/2013 financial at R84 722 980.68. Section 38(c) (i) of the PFMA17 read in conjunction with Treasury Regulations, Part 5, paragraph 12.5.118, requires accounting officers to take effective steps to collect all money owing to the department. Although in 2013/2014 financial year a total of R49 031 248.23 (23.5 percent) was recovered from the employees found guilty of financial misconduct or the financial misconduct did not result in any loss to the State. An amount of R159 236 764.12 (76.5 percent) was not recovered during the reporting period. A decrease in the amount recovered/no loss to the State in the 2013/2014 financial year by 33.6 percent was recorded as compared to the 2012/2013 financial year i.e. from 57.1 percent to 23.5 percent (RSA: PSC, 2015g: 11,18). In the 2012/2013 financial year, an amount of money involved in financial misconduct was R84 722 980.68. Departments indicated that an amount of R1 034 511.37 (1.2

percent) was recovered while an amount of R47 354 928.02 (55.9 percent) was considered as no loss to the State. In addition, an amount of R36 333 541.25 (42.9 percent) was not recovered. In the 2013/2014 financial year, a further amount of R2 554 228.29 representing 0.7 percent of the total amount that was not recovered in 2012/2013 financial year (RSA: PSC, 2013e: 12; RSA: PSC, 2015g: 19).

Figure 5–2: Cost of general unethical procurement practices



Source: South Africa, Republic (RSA). PSC. 2012b, 2013e and 2015g. Factsheet on finalised cases of financial misconduct for the 2011/2012, 2012/13, 2013/14 financial years.

Table 5–4 shows that an amount of R1 305 563.72 (0.6 percent) of the total amount involved in unethical practices was recovered from the employees found guilty of misconduct. An amount of R47 725 684.51 (22.9 percent) was considered as no loss to the State because the State did not suffer any loss. An amount of R159 236 764.12 representing (76.5 percent) was not recovered during the period being considered (RSA: PSC, 2015g: 11).

Table 5-4: Cost of general unethical financial practices 2011-2012 financial year

National/provinces	Amount R'000	Amount Recovered R'000	No loss to the state R'000	Amount not Recovered R'000
National	R47 672	R158	R35 256	R12 258
Sub- Total	R47 672	R158	R35 256	R12 258
Provincial				
Eastern Cape	R9 199	R7	R8 831	R361
Free State	R1 176	R0.00	R97	R1 079
Gauteng	R8 610	R196	R3 350	R5 065
KwaZulu-Natal	R4 727	R79	R127	R4 521
Limpopo	R1 199	R106	R43	R1 050
Mpumalanga	R1 422	R66	R4	R1 352
North West	R132 566	R9	R0.00	R132 556
Northern Cape	R576	R530	R14	R32
Western Cape	R1 122 465	R154	R6	R962
SUBTOTAL	R160 596	R1 147	R13	R146 978
TOTAL	R208 268	R1 306	R47 726	R159 237

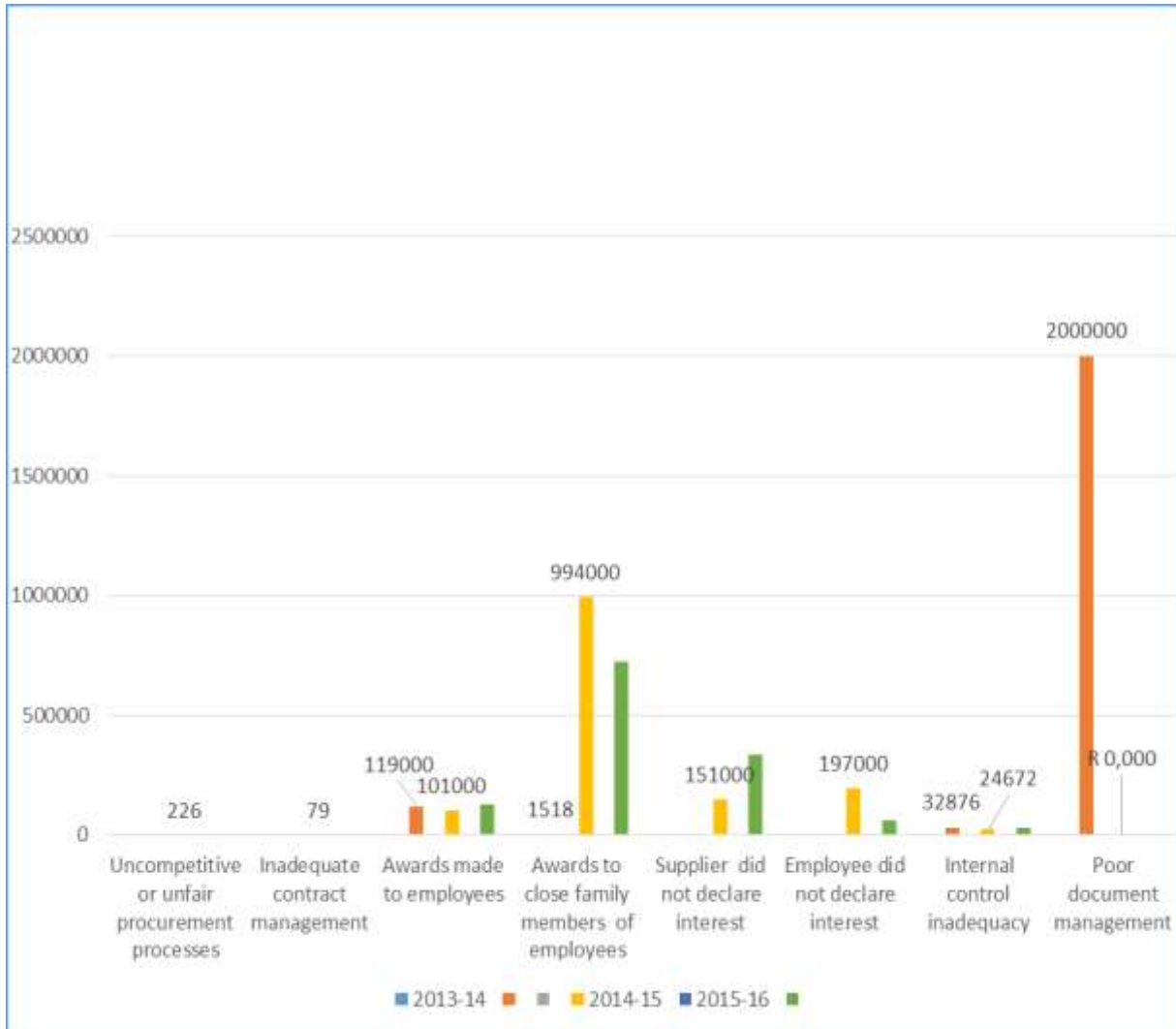
Source: South Africa, Republic (RSA). Public Service Commission (PSC) (2015g). Factsheet on finalised cases of financial misconduct for the 2013/14 financial years.

Figure 5-3 and Table 5-5 show the cost of unethical procurement practices as follows: where awards made to employees of departments, close family members of employees, and suppliers did not declare interests. In addition, cases where employees did not declare interests, inadequate internal control measures and poor document management for the financial years 2013/14 to 2015/16 were prevalent (RSA: AGSA, 2014a:59, 60; 2016b:41)

Awards made to employees was valued at R119 million in the financial years of 2013/14, in 2014/15 valued at R101 million and in 2015/16 valued at R129 million. Awards to close family members of employees for 2013/14, was valued at R1,52 million, in 2014/15, valued at R994 million and in 2015/16, valued at R725 million. Cases where the supplier did not declare interest was as follows for the financial years 2014/15, valued at R151 million, and 2015/16, valued at R336 million. Cases

where employees did not declare interest: in 2014/15 valued at R197 million and in 2015/16 valued at R59 million (RSA: AGSA, 2015A:66; 2016B:41).

Figure 5–3: Nature of unethical procurement practices



Source: Auditor General South Africa. (2014a, 2015a, 2016b). Consolidated general report on the national, provincial and public entities audit outcomes 2013/14, 2014/15 and 2015/16.

Internal control inadequacy and irregular procurement processes during the financial years 2013/14 was valued at R32, 876 million, 2014/15, at R24, 672 million and 2015/16, valued at R31, 596 million (RSA: AGSA, 2016b:36,42). For the financial years 2013/14, poor document management or no supporting documents, were

valued at R2.1 billion. In the financial years 2014/15 there were no recorded cases, followed by valued amount of R2, 526 million in the financial years of 2015/16 (RSA: AGSA, 2016b:42).

Table 5–5: Cost of unethical procurement practices

Cost	2013/14 R'000	2014/15 R'000	2015/16 R'000
Awards to employees of departments	R119,000	R101,000	R129,000
Awards made to close family members of employees of departments	R1,520	R994,000	R725,000
Supplier did not declare interest	-	R151,000	R336,000
Employees did not declare interest	-	R197,000	R59,000
In adequate internal controls	32,876	R24,672	R31,596
Poor document management	R2,100,000	-	R2,520
Total			

Source: South Africa, Republic (RSA). Auditor General SA (2014a, 2015a, 2016b).

Consolidated general report on the national, provincial and public entities audit outcomes 2013/14, 2014/15 and 2015/16.

As indicated above the size of unethical procurement practices is huge, as the amounts of the loss to the state could have been used fruitfully to build RDP houses, roads and other public services and works. It can be argued that procurement fraud and corruption generates public loss because of suboptimal performance resulting from suboptimal decisions, for example, procurement choices or project implementation – overspending on projects. The cost of procurement fraud and corruption practices falls most heavily on the poor because of the degradation of the quality and accessibility of public services they bring into the procurement environment (RSA: National Development Plan, 2013b:446). Government contracts and bribes can influence the government's choice of bidders to supply goods, services, and works, as well as the terms of their contracts. Firms may bribe to win a contract or to ensure that contractual breaches are tolerated (Rose-Ackerman and Sørreide, 2011:146).

5.3. Compliance with supply chain management legislation

The non-compliance with legislation in the South African public-sector procurement environment relates a story to the South African citizens. Lack of a high degree of professionalism in public procurement could result in islands such as procurement corruption, which can impede compliance with supply chain management legislation. De Boer & Telgen (1998) in Bor, Chepkwony & Bonuke, (2015:98) allude that non-compliance to public procurement legislation has been associated with lack of professionalism in the procurement environment. The South African public sector has challenges with regard to the procurement practices in national departments. Deviations from internal control systems were apparent in the overall audit outcomes performed by the AGSA, dating from 2011/12 to 2015/16. Seemingly, these deviations from internal controls were largely in respect of compliance with key legislation in the areas of supply chain management (RSA: AGSA, 2014a:21).

Compliance with public supply chain management (SCM) rules, legislation, norms and standards is critical to ensure that government's policy objectives achieved and sustained. In terms of section 217 of the Constitution of the Republic of South Africa, when national departments contract for goods and services, such contracts must be drawn up fairly, equitably, transparently, competitively, and cost-effectively. Despite the prescript from the legislative framework, non-compliance with legislation persists.

5.4. Case studies

This study on the administration of procurement practices in the South African public sector has depicted some wider and far-reaching consequences of unethical supply chain management and procurement practices. The analysis on procurement challenges will focus on seven case studies of national departments categorised under the government guide on cluster as the social protection, community, and human development government cluster. The national departments in the case study are the national Department of Cooperative Governance and Traditional Affairs; the

national Department of Rural Development and Land Reform; the National Department of Public Works; the National Department of Basic Education; the National Department of Social Development; the National Department of Human Settlements; and the National Department of Water and Sanitation.

The analysis of the findings of manifestation of unethical procurement practices in the South African public sector underpinned by the reports from the Special Investigating Unit and the Auditor-General of South Africa. The Special Investigating Unit has reported on procurement and corruption for the period of five years at the time of writing, as collected from the annual reports for the financial years 2010/11, 2011/12, 2012/13, 2013/14 and 2014/15. The Auditor-General of South Africa's (AGSA) audit outcomes reports for the period 2011/12 to 2015/16 were also critical for the execution of this chapter. The following are findings of the reported procurement practices in the seven national departments.

5.4.1. Department of Cooperative Governance and Traditional Affairs

The discussion on the national department of Cooperative Governance and Traditional Affairs (CoGTA) portfolio will focus on sub-portfolios of the Department of Cooperative Governance (DCoG); the Department of Traditional Affairs (DTA); the Municipal Infrastructure Support Agency (MISA); the Commission on Cultural Rights and Languages (CRL); and the Municipal Demarcation Board (MDB). The AGSA report states that the status of SCM remains unsatisfactory for CoGTA because of non-compliance with the requirements of SCM laws and regulations. The AGSA cited issues of inadequate internal controls to create a control environment that supports reliable compliance with legislation (RSA: AGSA, 2015a:172, 174). Issues relating to exercise of oversight responsibility regarding compliance and internal controls review and monitor compliance with applicable laws and regulations reported by the AGSA. The AGSA stated that audit outcomes regarding compliance with SCM legislation of the constitutional institutions of the MDB and the CRL Commission remained unchanged from the prior year as the status of SCM remains unsatisfactory for both

the MDB and CRL Commission. The state of affairs was due mainly to the auditees not complying with the requirements of the SCM laws and regulations. The CRL Rights Commission experienced a regression in the effectiveness of key controls, mainly because of instability of leadership and lack of action taken in respect of findings raised the previous year. The AGSA further stated that compliance with SCM laws and regulations remained a challenge, resulting in the entity incurring irregular expenditure (AGSA, 2013a:75–76).

The National Department of Cooperative Governance and Traditional Affairs (CoGTA) appointed the South African National Apex Tertiary Cooperative Ltd (SANACO) to manage and provide technical and administrative support services in respect of the Ward Based Cooperative Programme 2014 (RSA: SIU, 2014g:9). It discovered that fraudulent invoices submitted to CoGTA for payment. The entities/persons had not been entitled to such payments and referred to the Assets Forfeiture Unit (AFU) for investigation (RSA: SIU, 2015c:36). CoGTA had contravened section 38(1), read with section 86(1), of the PFMA. In addition, there had also been a contravention of regulation 25(9) (a) read with regulation 30(1)(c) of the CIDB Regulations.

The portfolio showed that the officials had not obtained three quotations, as prescribed by supply chain management legislation (2013/14), while MISA and the Department of Cooperative Governance had not always advertised competitive bids for 21 days. Committees composed in terms of the department's policy and the committees' mandates had not performed the bid adjudication. Information Technology goods not procured as prescribed by Treasury Regulations. CoGTA and MISA had not taken reasonable steps to prevent irregular expenditure. MISA had not paid all its creditors within 30 days from receipt of invoice as required by legislation. Material non-compliance with legislation might have resulted in financial loss. The Department of Cooperative Governance awarded contracts to bidders based on points given for criteria that differed from those in the original invitation for bidding (RSA: AGSA, 2015a:172). While MISA had not always applied the preferential

procurement points system when awarding contracts, and had not taken effective steps to prevent losses arising from criminal conduct (RSA: AGSA, 2015a:172).

MISA had not always evaluated bids as prescribed in legislation. To this end, the design and operational effectiveness of the Department of Cooperative Governance, DTA and MISA internal controls could not prevent irregular expenditure from occurring. The internal controls for processing and approving payments at the Department of Cooperative Governance and MISA were ineffective, resulting in payments made without actual services received. In the MDB, an entity in CoGTA, contracts extended without the approval of a properly delegated official and the accounting officer approved deviations without inviting competitive bids. MISA did not always evaluate its bids through committees composed as prescribed in procurement regulations (RSA: AGSA, 2013a:75; 2015a:172, 174).

Contracts and quotations awarded to suppliers whose tax matters not declared by SARS to be in order as required by Treasury Regulations 16A9.1 (d) and the Preferential Procurement Regulations. The thresholds for local content on designated sectors' procurement not properly applied in accordance with the requirements of preferential procurement regulation 9. Contracts and quotations were awarded to bidders based on preference points that had not been allocated and calculated in accordance with the requirements of the Preferential Procurement Policy Framework Act and its regulations (CoGTA, 2016a:130).

CoGTA did not have effective controls for payment processing and approval, and it had incurred irregular expenditure of R588 882 million. The majority of the irregular expenditure related to non-compliance with supply chain management laws and regulations when procuring goods and services related to the Community Works Programme (CWP). The result was that the status of supply chain management remained unsatisfactory as it resulted in material findings on compliance which was linked to irregular expenditure incurred (RSA: AGSA, 2015a:172–173; 2016b:106–108; RSA: CoGTA, 2016a:130).

It emerged that controls such as management review and monitoring compliance with applicable laws and regulations, performance of quarterly audits on the CWP, adequate project management and proper, and complete, accurate and reliable records not maintained. In addition, appropriate and timely action not taken against transgressors and monitoring and evaluation not strengthened to create a control environment that supported compliance with legislation (RSA: AGSA, 2014a:116).

The leadership did not exercise adequate oversight responsibility regarding financial, performance reporting, compliance, and related internal controls. Leadership did not effectively monitor timeous implementation of action plans developed to address internal control deficiencies and that resulted in laxity in the oversight of the Community Works Programme (RSA: CoGTA, 2016a:130).

5.4.2. Department of Rural Development and Land Reform

The Department of Rural Development and Land Reform (DRDLR) as a portfolio has three entities, namely: the Agricultural Land Holding Account (ALHA); the Ingonyama Trust Board (ITB); and the Deeds Registration Trading Account (Deeds). Occurrences of material non-compliance with legislation in the DRDLR portfolio were apparent during the period under review. The DRDLR did not maintain an effective, efficient and transparent system of internal control regarding predetermined objectives. The Deeds Registration Trading Account did not always follow competitive bidding processes and did not have an approved human resource plan. The DRDLR incurred irregular expenditure because of the contravention of SCM legislation and Treasury regulations relating to payments made without approval, and was thus liable for contravention of SCM legislation. The Deeds Registration Trading Account did not comply with the prescribed SCM procurement processes. The following controls strengthened to create a control environment that supports compliance with legislation:

- ◆ Develop processes and procedures in order to monitor compliance with legislation before entering into any transactions; and

- ◆ Officials held accountable for non-compliance with laws and legislation (RSA: AGSA, 2014a:236).

The ITB did not always follow a competitive bidding process when procuring goods and/or services. The irregular expenditure incurred was as a result of the contravention of SCM legislation and Treasury regulations relating to payments made without approval; deviation from internal policies without valid reasons; and contravention of SCM legislation and payments without approval. The ITB failed to comply with the prescribed SCM procurement processes because it did not follow competitive bidding. The AGSA recommended that the following controls strengthened to create a control environment that supports compliance with legislation, develops processes and procedures to monitor, and identifies non-compliance with legislation and hold officials accountable for not complying with legislation (RSA: AGSA, 2015a:293–294). The DRDLR did not obtain three quotations or approval for services rendered (RSA: AGSA, 2016b:184). It has to develop and implement processes and procedures to monitor compliance with legislation, including establishing a compliance framework. In addition, it has to implement daily and monthly controls to track and prevent non-compliance with legislation and related SCM regulations proactively (RSA: AGSA, 2016b:185).

5.4.3. Department of Public Works

The Project Management Trading Entity (PMTE), the Water Supply Commission (WSC), the Council of Building Environment (CBE), the Independent Development Trust (IDT), and the Construction Industry Development Board (CIDB) are under the portfolio of the Department of Public Works (DPW). The DPW had not implemented effective, efficient and transparent systems of risk management and internal controls for performance information. The CBE committed material non-compliance with legislation, which might have resulted in financial loss. The Council of Building Environment (CBE) did not advertise bids for the required minimum period and compose the bid adjudication committee in line with its policies. The preferential

procurement point system not applied in all instances where it was required (RSA: AGSA, 2015a:186). The study found the material non-compliance with legislation by the CBE, which might have resulted in financial loss.

The SIU identified, investigated, and redressed improprieties including fraud, corruption and maladministration within the DPW SCM component. The focus areas also pertained to specific contracts/tenders; leasing of buildings for client departments; prestige accommodation; and general procurement irregularities. The investigation into irregularities related to lease accommodation by the DPW was a major focus area with approximately 58 leases investigated. The study also identified numerous irregularities in the awarding and administration of leases (RSA: SIU, 2012b:14). An investigation was instituted regarding the incurring of irregular expenditure and payment of expenditure due, owing or payable to the department, focusing on specific contracts/tenders, leasing of buildings for client departments and Prestige accommodation (RSA: SIU, 2011a:14; 2015c:30).

The SIU reviewed SCM processes employed in the awarding of certain contracts to external service providers in order to confirm whether the system complied with the applicable legislation (SIU, 2010/11:14). Nineteen (19) matters investigated; the allegations included abuse of emergency delegations and deviations from SCM processes; the inflation of bills of quantity; fruitless and wasteful expenditure; corruption and collusion between DPW officials and contractors; conflicts of interest; non-disclosure of outside interests; and irregular payments. The investigation focused on specific contracts/tenders; leasing of buildings for client departments; prestige accommodation; and general procurement irregularities. In addition, the main issues were systemic weaknesses; identifying procurement irregularities; assessing delivery in terms of the contracts; identifying corrupt practices; instances of serious maladministration; and recovery of any losses identified (RSA: SIU, 2011a:14; 2012b:14).

The DPW, PMTE, CIDB and IDT did not keep proper records for contract management. Allegations of corruption, improper conduct, or failure to comply with the supply chain management system revealed (RSA: AGSA, 2014a:129–131). The DPW did not implement effective, efficient and transparent systems of risk management and internal controls for performance information. The CBE did not advertise bids for the required minimum period. In addition, the CIDB did not compose the bid adjudication committee in line with procurement policies. The preferential procurement point system not applied in all instances where it was required. Checklists not used to ensure that all SCM requirements met and that irregularities within the SCM division identified (RSA: AGSA, 2015a:218).

Lease agreements signed prior to the client being satisfied with the condition of the building. In addition, these lease agreements signed before bid committee approval, and renewal rates increased by as much as 34 percent. DPW officials colluded with service providers to ensure that leases irregularly awarded in return for significant financial benefit. For example, 28 leases, estimated at R320 million, were found to have been awarded to one property owner. In return, the two DPW officials received financial benefits amounting to R4 million. Ten (10) cases investigated; and 64 systemic recommendations made. Criminal action instituted in four of the cases. The SAPS Middestad lease contract, to the value of R780 million, was set aside by the court. Another lease award was stopped and resulted in savings of R1.68 million (RSA: SIU, 2012b:14).

With reference to 27 cases, specific contracts/tenders, leasing of buildings for client departments and general procurement irregularities investigated (RSA: SIU, 2013d:20). The matter of the IPID lease (City Forum Building) involved a lease agreement acquired by fronting under the auspices of a BEE property owner. The application of the lease was valued at R139 million. The head of property management suspended, and disciplinary action instituted regarding a lease for property situated at 116 Herbert Baker, which was valued at R6.3 million.

An investigation into the R609 million lease agreement for the Wachthuis lease (SAPS) resulted in disciplinary action against two officials. The SIU has made 19 systemic investigations and ordered the cancellation of the lease agreement. In another instance, an undue payment valued at R723 349.55 made on behalf of the property owner. The issue of the tenant renovations revealed the deviation of R56 million. Three matters, which involved VAT fraud amounting to R2.5 million, were referred to SARS for further action (RSA: SIU, 2013d:21). The procurement and administration of leases by the Department for the Department or other National Departments and organs of state for accommodation needs conducted. In addition, the investigation related to theft, fraud, corruption, irregularities, malpractices or maladministration in the affairs of the Department in respect of these leases, including the causes of such deviations from correct procedure, and any loss, damage or prejudice actually or potentially suffered by the Department or the State (RSA: SIU, 2014g:11). The investigation pertained to leases concluded with private property owners for and on behalf of the departments concerned (RSA: SIU, 2015c:27). Relief to the value of R155 million sought against the principal agents (RSA: SIU, 2015c:30).

The irregular and/or unlawful settlement between the Department and a contractor with regard to the cancellation of the Skilpadhek Border Post (SBP) investigated. The project related to the main contract for the upgrading of essential infrastructure. Civil proceedings instituted in the North Gauteng High Court for the recovery of R50.8 million. A criminal case linked to an amount of R374 million reported (RSA: SIU, 2013d:21).

Project Jarmen was a multi-phase project undertaken by the DPW for the construction of various buildings and facilities at the Waterkloof Airforce Base. An open and competitive tender procedure not followed. However, there were no irregularities identified in the awarding of the contract, which amounted to R35 million (RSA: SIU, 2013d:21).

The SIU investigated irregularities in relation to the prestige project involving the security upgrading of the private residence of the President, situated at Nkandla, KwaZulu-Natal. The investigation related to the irregular procurement of goods or services by the Department of Public Works. The irregular appointment of contractors and service providers to provide goods or services for the upgrades revealed. In addition, pertinent matters with regard to the relationship between contractors, suppliers or service providers and departmental officials investigated. The manipulation of the department's procurement processes by any unlawful scheme or practice, such as over-quoting or split tenders, investigated.

The indicators pointed out that there had been evasion of competitive bidding processes by renewing, extending and amending of existing contracts. In addition, undeclared or unauthorised interests held by departmental officials in contractors, suppliers or service providers appointed to supply goods or render services were revealed. Further, part of the indicators highlighted undue or irregular payments made by contractors and suppliers; the state not having received value for money with regard to the project; and improper or unlawful conduct by contractors, suppliers or service providers of the department or other third parties in relation to the project (RSA: SIU, 2014g:9; 2015c:28–29). The Public Protector also investigated the Nkandla project and recommended that the President should pay the difference between the state payment contract and the extras, not part of the contract.

The Regional Manager of the DPW's Bloemfontein office had awarded contracts amounting to R10 million to companies which awarded bursaries to his two children. Disciplinary action was undertaken, which resulted in the dismissal of this senior manager who was by that time a Director General. Four officials had undeclared interests in companies doing business with the department (RSA: SIU, 2013d:21).

5.4.4. Department of Basic Education

The Education Labour Relations Council (ELRC) falls under the DBE portfolio. A large part of the Accelerated Schools Infrastructure Delivery Initiative (ASIDI) programme implemented through implementing agents such as the Development Bank of South Africa (DBSA) and the Independent Development Trust (IDT) at exorbitantly high agency fees. In a number of provinces, the delivery of learner support materials are managed through intermediaries (RSA: National Treasury, 2016c:3). The issue of value for money now comes into play.

The DBE and the ELRC did not take reasonable steps to prevent irregular, fruitless and wasteful expenditure. Contracts awarded to bidders based on preference points that not allocated according to the requirements of the Preferential Procurement Policy Framework Act (PPPFA) and its regulations. Furthermore, some expenditure was not in line with the requirements of the school-infrastructure backlog grant. The extent of non-compliance issues is indicative of a highly deficient monitoring process in the compliance environment. The accounting officer did not ensure that the department had set up and maintained an effective, efficient and transparent system of internal control regarding performance management (RSA: AGSA, 2014a:162; 2015a:217–218).

5.4.5. Department of Social Development

South African Social Security Services (ASSA) and the National Development Agency (NDA) are the entities under the Department of Social Develop portfolio. Supply chain management, non-compliance and irregular expenditure with regard to the Department of Social Development, SASSA and NDA were analysed. The study revealed that those entities had material issues regarding non-compliance with supply chain management and irregular expenditure. The Department of Social Development and the two entities, SASSA and the NDA, found not to have complied with the legislation during the financial year 2014/15. In the national department of

social development, material non-compliance with legislation by SASSA and NDA identified.

The NDA concluded transactions below the value of R500 000 without obtaining the required price quotations and without inviting competitive bids, as required by treasury regulation 16A6.1. Further, the NDA awarded certain contracts to and accepted quotations from bidders that had not submitted a declaration as to whether they employed by the state or connected to any person employed by the state, which is a prescribed procedural requirement in order to comply with treasury regulation 16A8.3. The NDA awarded a construction contract to a contractor not registered with the Construction Industry Development Board (CIDB) in accordance with section 18(1) of the CIDB Act and CIDB regulations 17 and 25(7A). The NDA did not always register construction projects with the CIDB, as required by section 22 of the CIDB Act and CIDB regulation 18. The NDA did not provide sufficient and appropriate audit evidence to confirm that a contract had been awarded to bidders based on points scored on criteria stipulated in the original invitation; and did not always apply the preferential procurement points system in the procurement of goods and services (RSA: AGSA, 2014a:183–184).

SASSA awarded a contract to a bidder that had not scored the highest points in the evaluation process, in contravention of section 2(1) (f) of the Preferential Procurement Policy Framework Act and Preferential Procurement Regulations (RSA: AGSA, 2015a:239–240). SASSA did not take reasonable steps to prevent irregular expenditure or take appropriate disciplinary steps against those responsible for it. They did not implement adequate controls to ensure the proper management of payments to a service provider for additional work performed on the social grants re-registration. SASSA's internal audit unit did not evaluate the reliability and integrity of financial and operational information. As such, procurement without competitive bidding or quotation processes and non-compliance with procurement process requirements and legislation on contracts, unfair or uncompetitive procurement processes in SCM prevailed (RSA: AGSA, 2015a:239–240). A regression in the

procurement and contract management function resulted in an increase in irregular expenditure (RSA: AGSA, 2014a:183–184).

With reference to the Clearing House Electronic Sub-Register System (Chess 2) audit report on self-verified accounts, 2 032 employees were identified to have had business interests with external suppliers contracted to SASSA. The Chess 2 audit report is a report made to SASSA containing an analysis conducted by the SIU in respect of procurement irregularities found within the SASSA supply chain management processes (RSA: SIU, 2013d:26). The investigation uncovered 8250 invoices with the same supplier name, invoice date and amount, and 112 invoices paid to different suppliers with the same amount, date and invoice numbers. The study found that eight employees shared the relevant bank account numbers with other employees. Four of these employees shared the same surname and the others have different surnames. Fifty-seven (57) employees shared addresses with other employees. Fourteen (14) employees had identity numbers that did not match the gender of the employee. The study found that, 14898 instances where different suppliers with sequential invoice numbers on the same day, which could indicate splitting of invoices and phantom companies, as high-risk suppliers.

The study found that, an internal audit review conducted on the procurement of ICT services and/or goods by SASSA. The audit revealed suspected procurement irregularities relating to contracts awarded to several suppliers/service providers by SASSA. Contracts extended without having followed the tender processes. This occurred in an instance where a contract extended for a period of two years with a top-up amount of R72.2 million, and fresh tender processes had been violated. In one instance, the invitation to tender did not include the allocation of preference points (RSA: SIU, 2013d:58).

A contract to the value of R304 920 was awarded to a company based on a quotation which was in contravention of National Treasury Note No. 2 of 2005, which provides that competitive bids should be invited for bids exceeding R200 000. Quotations

invited for the supply of printers and five companies provided quotes and the contract valued at R83 290 was awarded to a specific company whose quote did not contain the information necessary to qualify for the contract (such as company registration number, VAT registration number, validity period of quote, and price). No needs analysis/feasibility study conducted before going out on tender. In all, no in-depth needs analysis or feasibility, study conducted on 21 Information and Communication Technology (ICT) contracts (RSA: SIU, 2013d:58).

The conflict of interest is overwhelming the department in that control over it is a serious challenge. The Bid Evaluation Committee recommended a company that quoted R7 million more compare than the other for the provision of 3G cards and the installation of a VPN system. A certain company awarded a tender even though it did not achieve and allocated highest scores during the evaluation process. This was for a contract for the installation of networks and telephony infrastructure. The Bid Evaluation Committee (BEC) and Bid Adjudication Committee (BAC) chaired by the same person for the awarding of a contract to a company for networks and telephones (RSA: SIU, 2013d:59).

The Bid Evaluation Committee awarded a contract to a company to provide mobile trucks and maintenance, despite its shortcomings. The chairperson of the BAC re-wrote the BEC submission when this was not his function, and without the relevant documentation. Two incidents of non-delivery of services identified; these included an instance where a company contracted and paid to develop and implement a system, but never done. In one instance, the value of the contract was R33.4 million for the installation of networks and telephony infrastructure (RSA: AGSA, 2015a:239–240; RSA: SIU, 2013d:59).

5.4.6. Department of Human Settlements

The analysis of the Department of Human Settlements included the Community Schemes Ombuds Service (CSOS) and the National Home Builders Registration

Council (NHBRC). The analysis also includes the provincial departments because a large amount of budget money and a number of projects channeled for implementation through the provincial departments. The Department of Human Settlements faced with challenges of corruption and maladministration in its low-income housing scheme. The irregular awarding of subsidies to non-qualifying beneficiaries and underperformance by contractors in the delivery of houses or the irregular awarding of contracts found to be prevalent. The conduct of officials administering low-income housing schemes and awarding subsidies or development contracts discovered through a forensic investigation approach (RSA: SIU, 2010c:14–15).

The SIU investigated fraud, corruption and maladministration in respect of the development and delivery of low-cost housing by national and provincial departments, local authorities, and housing development boards. The investigation was part of 36 low-cost housing projects linked to 97 individual contracts with a total value of R5.7 billion (RSA: SIU, 2014g: 11).

The Free State department of Human Settlements (FSDoHS) followed incorrect procurement procedures in the appointment of a construction company for the construction of 300 low-income housing units in Viljoenskroon. No application for the housing project submitted and the FSDoHS therefore did not evaluate a project application in respect of the project. The FSDoHS made advance payments amounting to R4.9 million to a contractor. The project application process, as prescribed by the National Housing Code (NHC) not followed, and the FSDoHS undertook no evaluation process (RSA: SIU, 2013d:23).

Correct procurement procedures not followed in the appointment of a contractor for the construction of 100 low-income housing units in Ladybrand. The project application process as prescribed by the National Housing Code (NHC) not followed, and the FSDoHS undertook no evaluation process. It appears as if reliance placed

solely on the selection of projects for approval, and that the bidding committee not used to select a bidder (RSA: SIU, 2013d:23).

The Eastern Cape Province department of Human Settlements (ECDoHS) concluded an agreement with a private developer regarding the Bethelsdorp North Area C housing projects. The appointment was originally in respect of the development of 1 000 units in the area and a further 211 units were later added to the project, increasing the number to 1 211. The private developer did not obtain the required environmental management consents prior to the commencement of the project (RSA: SIU, 2013d:23).

The AGSA identified material non-compliance with legislation by the National Department of Human Settlements (NDHS) in that the department did not maintain effective, efficient and transparent systems of internal control for performance information. NHBRC did not take reasonable steps to prevent irregular expenditure. The procurement processes of the NHBRC were not always fair, transparent and equitable as required by Treasury regulations. The supply chain management risk remained unsatisfactory at the NHBRC and resulted in material non-compliance with legislation (RSA: AGSA, 2014a:227–228).

The NHBRC did not use a supply chain management (SCM) compliance checklist to ensure that all applicable legislation had been adhered to prior to the procurement process being finalised for all contracts and transactions. Disciplinary processes not expedited, particularly regarding multi-year contracts, where irregular expenditure continued incurred. The NDHS, CSOS and NHBRC did not maintain effective, efficient and transparent systems of internal control with respect to performance information. The status of the SCM risk remained unsatisfactory at the NHBRC and resulted in material non-compliance with legislation and significant amounts of irregular expenditure (RSA: AGSA, 2015a:285–286).

In Viljoenskroon, irregularities associated with the tender process included the extension of the application of the original tender and the awarding of work to contractors who were not part of the original tender process, or who had failed to be selected as part of the original tender (RSA: SIU, 2013d:22).

An amount of R28 000 was claimed by the contractor for the foundation, floor slabs, and up to wall-plate level relating to this site. There was no construction undertaken by the appointed contractor. The payment made in contravention of the NHC (RSA: SIU, 2013d:24).

The FSDoHS appointed a construction company to construct 100 houses. FSDoHS made an irregular advance payment to a contractor, made prior to the conclusion of an addendum for the construction of housing units in Ventersburg. Subsequent to that, the FSDoHS entered into a further addendum contract with the contractor, which made provision for advance payments of R924 000. Further, an advance payment amounting to R896 000 made. No water and sewage connections provided in respect of 53 of the 100 sites despite the fact that 100 top structures were constructed (RSA: SIU, 2013d:23). In terms of section 86(1) of the PFMA, the accounting officer at the time willfully or grossly neglected and failed to comply with the provisions of section 38 of the PFMA (RSA: SIU, 2013d:23–24).

In Ladybrand, irregularities associated with the tender process, including the extension of the application of the original tender (in time and in scope), discovered. In addition, the award of work to contractors that were not part of the original tender process, or failed and selected as part of the original tender process, occurred. Irregular expenditure amounting to R437 516.88 was incurred by the FSDoHS in respect of a “top-up” payment that was effected after the original payment made for work done on 71 surface beds and foundations (RSA: SIU, 2013d:23–24).

In Bethelsdorp North Area C, the appointment of the private developer was contrary to the provisions of the NHA and the NHC, and all expenditure incurred as a result of

this appointment, amounting to R74 million, was irregular. The state of affairs is contrary to section 86(1) of the PFMA, which states that the accounting officer at the relevant time willfully or grossly negligently or failed to comply with the provisions of section 38 of the PFMA. The study found that the ECDoHS would not enter into any further contractual arrangements with the private developer awarded a contract worth R568 million (RSA: SIU, 2013d:24).

5.4.7. Department of Water and Sanitation

Auditees included in the portfolio audited by the Auditor-General of South Africa were the Water Research Commission (WRC), Department of Water and Sanitation (DWS), Water Trading Entity (WTE) The audit outcome of the portfolio remained unchanged. The report of the Auditor-General for the year 2010/2011 identified instances of maladministration in the Department of Water Affairs (DWA). In addition, allegations were received from the National Public Service Commission's fraud and corruption hotline, and investigated by the DWA's Internal Audit Unit, Gobodo, KPMG, Ligwa and Kwinana (RSA: SIU, 2013d:29). Numerous irregularities in respect of the procurement of goods, works and services, failure to disclose interests, financial mismanagement and misconduct were uncovered (RSA: SIU, 2013d:29).

The department faced a challenge in following competitive bidding processes. The Water Trading Entity (WTE) and the Water Research Commission (WRC) did not follow competitive bidding processes, and three quotations not requested as prescribed by legislation. The DWS did not apply the preferential procurement points system in awarding contracts. Furthermore, the DWS incurred irregular expenditure of R87 million (R77.6 million relating to one specific contract), the WRC R3.2 million, and the WTE R2.9 million (RSA: AGSA, 2015a:322).

The accounting officer did not ensure that the department maintained an effective, efficient and transparent system of internal control regarding performance management. The DWS did not apply the preferential procurement points system in

awarding contracts. The DWS, the WTE and the WRC did not take reasonable steps to prevent irregular (RSA: AGSA, 2015a:321–323).

The DWS, WRC and WTE did not take reasonable steps to ensure full compliance with certain procurement processes in obtaining the required number of quotations, evaluation of bidders, and declaration of interests (internally as well as externally). The WTE and the WRC did not always follow competitive bidding processes or did not request three quotations as prescribed (RSA: AGSA, 2013a:159, 2014a:257–258; 2015a:322).

The Forest Fire Association project and the Buca Management projects, which exceeded 20 percent of the original contract price and the DWS was challenged with regard to indicators on procurement related to variation orders issued in that respect. There was non-delivery by the Sundays River Municipality in respect of the Patterson Bulk Water Supply project, as well as the Sundays River Municipality Regional Bulk Water Scheme. There was fruitless and wasteful expenditure in respect of the Continental Building, which was not occupied, despite the fact that rental had been paid. An issue relating to the employment and payment of 104 “ghost workers” in respect of the installation of infrastructure in Mpumalanga revealed. The value of the procurement was in excess of R440 million (RSA: SIU, 2013d:29).

The SIU investigated allegations related to procurement of goods, works or services by the Department of Water Affairs and undisclosed interests, which officials might have had with contractors. Further, the SIU investigated suppliers or service providers who had bid for work or did business with the department. Conflict of interest found to be taking place in the Department of Water and Sanitation. Employees from the CIPC with entities registered to their names identified. The unit then focused on the transactions conducted on the Basic Accounting (BAS) and SAP Systems (37 SAP officials linked to 27 entities that conducted business with the department). The entities received an amount of R14.3 million from the department. 30 officials were linked to 27 entities that conducted business with the department. A

further 29 officials were linked to companies that were registered on the department's supplier database. Additionally, 35 spouses of officials of the department linked to 35 entities conducting business with the department. In addition, ten service providers rendered 135 duplicate invoices of various goods and services to the department. Further, 135 transactions were linked to ten companies with possible invalid VAT numbers, and these VAT numbers were linked to the duplicate invoices. Payments for 40 transactions made with no invoices regarding various goods and services rendered to the department.

The study found that, the SIU investigated moneys owed to the Department for the funding of the Paterson Bulk Water Project. It was owed in relation to the procurement and contracting of or for works or services by the DWS. The study found that an undisclosed or unauthorised interest that the DWS's personnel might have had with contractors, suppliers or service providers who had bid for work or conducted business. In addition, issues such as procurement fraud with regard to the manipulation of procurement processes; VAT fraud; fraud in respect of payments received; and fraud for submitting invoices for payment for which the entities/persons were not entitled were investigated (RSA: SIU, 2014g:12; RSA: AGSA, 2014a:257-258).

It merged from the findings that South African procurement practice lags behind in terms of following procurement procedures as far as the invitation, evaluation, and award of tenders as outlined in the study are concerned. Further, the practice runs short of monitoring of effective and competitive tendering processes and contract management. Apparently, bid committees lack competency and expertise in terms of ensuring that the bid documents are complete and apply the predetermined criteria in terms of the original bid documents.

There is a lack of accountability and control in the procurement processes which undermines competition, transparency, value for money, equity, and fairness. This state of affairs complicated by non-compliance with legislation; inadequate contract

management; unethical practices in the tendering processes; conflict of interest; and tender specifications not followed. Procurement processes do not follow feasibility studies when determining demand management and thus result in scope creeping, especially in infrastructure development. If public procurement is not executed correctly, ineffective and inefficient procurement could be one of the reasons for poor administration of procurement practices in the public sector.

5.5. Manifestation of unethical procurement practices

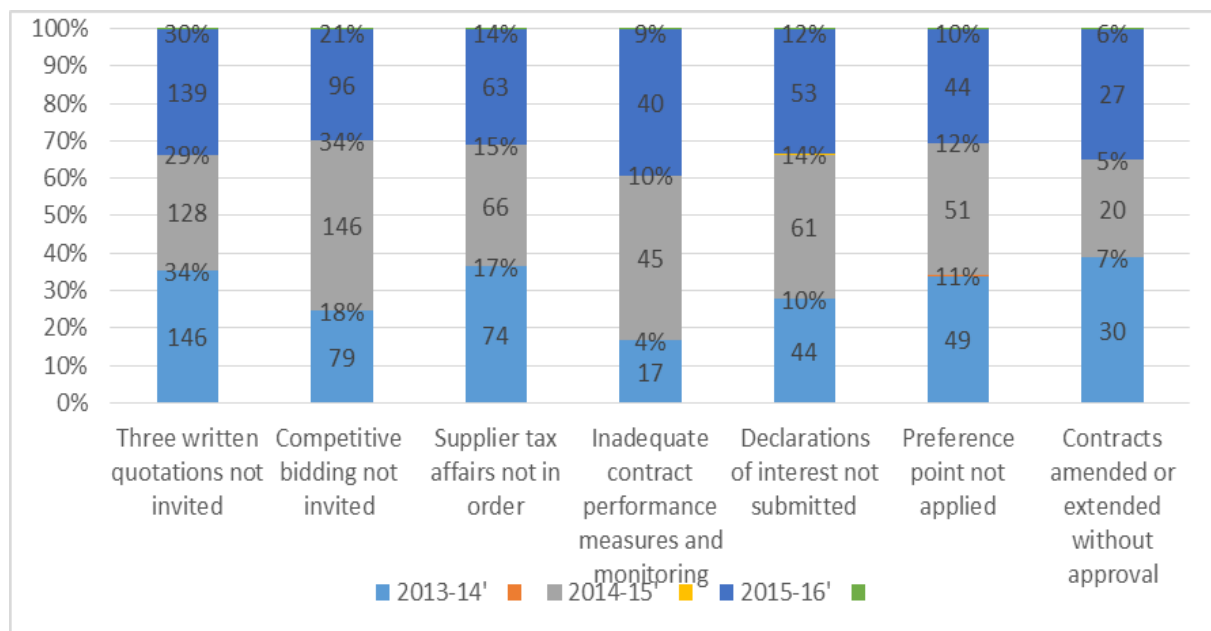
In terms of the South African Constitution, regulating public procurement practices is a machinery to usher in transparency, accountability, value for money or economy, and integrity in the use of public funds. To this end, the main purpose is to ensure efficient use of public funds. However, information and reports in the public domain reveal that even with the enacted regulations, there are losses of public funds attributed to public procurement. Moreover, the case studies revealed dissatisfaction among stakeholders brought about by loopholes left by the regulations, used by dishonest people to make the procurement practices inefficient. The Auditor-General South Africa in particular has reported factors influencing compliance and non-compliance of public procurement procedures. However, the Auditor-General South Africa does not specifically establish the manifestation of unethical procurement practices. This chapter filled this gap through establishing the manifestation of unethical public procurement practices in national departments. Based on the case studies as articulated above, the administration of procurement practices in national departments plugged by protracted manifestation of unethical conduct in procurement practices. Table 5-6 and Figure 5-4 reflect how unethical procurement practices unfolded. Policies, which national departments craft governs set of principles, which establish the general parameters for an organisation to follow in carrying out its responsibilities.

Table 5–6: Manifestation of unethical procurement practices

Type	2013-14		2014-15		2015-16	
	No of cases	%	No of cases	%	No of cases	%
Three written quotations not invited	146	34%	128	29%	139	30%
Competitive bidding not invited	79	18%	146	34%	96	21%
Supplier tax affairs not in order	74	17%	66	15%	63	14%
Inadequate contract performance measures and monitoring	17	4%	45	10%	40	9%
Declarations of interest not submitted	44	10%	61	14%	53	12%
Preference point not applied	49	11%	51	12%	44	10%
Contracts amended or extended without approval	30	7%	20	5%	27	6%

Source: RSA: Auditor General South Africa. (2014a, 2015a, 2016b). Consolidated general report on the national, provincial and public entities audit outcomes 2013/14, 2014/15 and 2015/16.

Figure 5–4: Manifestation of unethical procurement practices



Source: RSA: Auditor General South Africa. (2014a, 2015a, 2016b). Consolidated general report on the national, provincial and public entities audit outcomes 2013/14, 2014/15 and 2015/16.

In South Africa, the Code of Conduct for Supply Chain Management Practitioners and Other Role Players reflects the required conduct expected from functionaries in respect of conflict of interest, accountability, openness, and confidentiality. The Code of Conduct places an obligation on institutions to ensure the clearance of members on the level of 'confidential' (RSA: National Treasury, 2003d).

The manifestation of unethical procurement practices included the following; three written quotations not invited in 146 cases (34 percent) for 2013/14, 128 cases (29 percent) for 2014/15, and 139 cases (30 percent) for 2015/16. Competitive bidding not invited in 79 cases (18 percent) for 2013/14, 146 cases (34 percent) for 2014/15, and 96 cases (21 percent) for 2015/16. Supplier tax affairs not in order were identified whereby, 74 cases (17 percent) for 2013/14, 66 cases (15 percent) for 2014/15 and in 2015/16, and 63 cases (14 percent). Inadequate contract performance measures and monitoring amounted to 17 cases in 2013/14, 45 cases in 2014/15, and in 2015/16, and 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 (RSA: AGSA, 2016b:41)

In addition, 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. In terms of South Africa's Disciplinary Code and Procedures (Resolution 1 of 2003), public institutions have 60 days within which a hearing should be held (Fourie, (2015) (<https://www.researchgate.net/publication>).

There is a growing trend in believing that increased devolution of authority and more discretion for public-sector managers allow more opportunities for irregular behaviour.

However, irregular behaviour may not be bad; it may reflect innovation rather than misconduct. Public officials may be confused about how to operate, detailed regulations and rules reduced and management of information systems and accountability structures have not kept pace with devolution (El-Ayouty, Ford & Davies, and 2000:42). Critical to enhancement of ethical behaviour as opposed to irregular expenditure and behavior is the presence of political commitment.

The argument in favour of the manifestation of unethical procurement practices is based on undertone that follows. It is noteworthy that, despite those policies and codes, there seems to be a manifestation of unethical procurement practices in the selected national departments. Despite the procurement policies as alluded to above, there are still challenges of unethical behaviour; unavailability of documents; uncompetitive or unfair procurement processes; contracts awarded to employees or state officials; irregular expenditure and non-compliance with such policies and regulations. This state of affairs results in the perception that procurement fraud and corruption are taking place in those departments (RSA: AGSA, 2012a:83).

The study found that the manifestations were further related to non-compliance with supply chain management legislation; lack of ethical leadership and 'tone' at the top; lack of professionalism and transparency in public procurement. In addition, the manifestation related to inadequate internal good governance, accountability and controls; inadequate contract management; conflicts of interest; uncompetitive or unfair procurement processes; lack of supporting documentation for the award process; and continuous irregular expenditure in their departments. The discussion on the synopsis of the various manifestations on unethical procurement practices follows hereunder as the findings of this research.

The administration of procurement practice would be difficult without supply chain management legislation, regulations, and frameworks. Non-compliance with key legislation remains at high levels and irregular expenditure continues to be of particular challenge in national departments. The management of public procurement

needs to be in accordance with community standards and be effective, efficient, and consistent with the broader roles of government. In the case of the South African public-sector procurement environment, where the dominant political concern has been the principles of transparency, equity and fair dealing or public confidence, management of public procurement through an extensive regulatory framework should constitute the status quo.

In addition, the monitoring of public procurement practices plays an important role in all national public procurement systems. This monitoring comprises every systematic observation of the public procurement system and process conducted in order to assess the way in which this system functions and develops over time, and to establish whether the desired (targeted) state of play, as defined by policy makers, achieved. The compliance assessment functions include methods and proceedings applied in order to detect and remedy irregularities in public procurement. In some countries, public procurement organisations given an even more proactive role to play in the initiation of proceedings for judicial review in courts for violations of public procurement law.

It emerged from the case studies that leadership did not take appropriate action with regard to a lack of controls in the finance and SCM directorates, resulting in non-compliance, such non-compliance remaining undetected until the audit. In the South African national departments, there seems to be a challenge in terms of compliance with legislation by agents or those subordinates delegated to perform the duty. The question of how best to construct, monitor and enforce contracts or agreement relationships between the principal or leadership and agents or subordinates is both extremely common and an issue of ensuring significance. In this scenario, it would seem that when agency problems arise, perhaps the principals' goals might conflict with those of agents and thereby create the possibility that agents will not realise the objectives sought by the principals.

Lack of communication of new or amended policies and procedures to affected officials of auditees is a problem. In any contemporary industry, the data and reports showing compliance to regulatory needs must be robust and come from a reliable source. It is emerging that many developing countries lack a systematic approach to records management. It is noteworthy that accurate and readily accessible records of judicial rulings reduce the potential for illicit manipulation resulting from delays, corruption, and inaccuracies. Dysfunctional records management undermines legal and judicial reform, creating room for corruption or collusion in the procurement environments. This negatively affects enforcement and reduces compliance. The sources of data safeguarded against tampering in such a way that no one can alter data without leaving some evidence of that change. Arguments are that poor records management has had an adverse effect on service delivery (Tukamuhabwa, 2012:37; Bor et al, 2015:98). Citizens expect public servants to serve the public interest with impartiality, legality, integrity and transparency on a daily basis. Core values guide the judgment of public servants on how to perform their tasks (OECD, 2011:5).

The issues of professionalism and transparency are critical in the administration of procurement practice. Non-compliance with public procurement policies has been associated to lack of professionalism. Professionalism in public procurement relates not only to the levels of education and qualifications of the workforce but also to the professional approach in the conduct of government business activities. If the workforce is not adequately educated in procurement matters, serious consequences arise including breaches of codes of conduct. Procurement professionals grapple with various issues affecting their practice and the organisation in which they work, for instance, whether it is important to attain procurement certification and the skills required of procurement professionals to enable them to perform effectively and deliver results. Lack of a high degree of professionalism in public procurement could result in vices, such as corruption, which ultimately impedes compliance (Tukamuhabwa, 2012:38).

Building an ethical culture requires one also to understand the underlying challenges that may hamper service delivery and compliance with supply chain management legislation. As cited in Appel and Plant (2015:59), Amundsen and De Andrade (2009:6) caution management to be aware of the reasons why staff may not value ethics. Appel and Plant (2015:59) discuss how the Auditor-General South Africa (RSA:AGSA, 2014a:32; 2015a:9) proclaimed that the minimum actions requiring effective and appropriate disciplinary steps as prescribed by legislation had not been instituted against officials involved in transgressions relating to irregular, fruitless and wasteful expenditure at national, provincial and local government levels. It is against this background that leadership condones unethical behaviour in national departments.

The Auditor-General asserts that he found a lack of day-to-day monitoring and involvement by the leadership in the administration of the department. This includes taking ownership of compliance issues and addressing key control deficiencies. There is a lack of adequate internal controls and procedures to ensure compliance with applicable laws and regulations (RSA: AGSA, 2012a:90).

Internal controls mark the point of departure regarding sound financial management and administration. OECD (2012:10) alludes to the fact that internal controls provide a reasonable assurance that public organisations deliver quality services in an efficient manner, in accordance with planned outcomes. Internal controls can be effective in preventing corruption if there are guarantees in place to ensure the independence of internal audit, including the adequate capability of internal auditors. In Kgomo and Plant (2015:87), the COSO Framework, published in May 2013, describes the control environment as the foundation and anchor of the ethics climate because it sets the tone-at-the-top. Tone-at-the-top is an important factor in determining the role played by internal controls and the expected conduct within the organisation. The combination of monitoring compliance with legislation and reviewing of control activities has always been proposed as one of the most effective systems of internal controls for financial reporting.

The enforcement of rules in the institutions are at least as important as the rules themselves. The Institute of Directors in Southern Africa (IoDSA) (2016:30) alludes to the fact that the King IV Code recommends that those charged with governance should ensure that compliance understood, not as an obligation, but as a source of rights and protection.

Bor et al (2015:97) inform us that non-compliance includes non-compliance with 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. Most common findings related to no or inadequate contract performance measures and monitoring and contracts amended or extended without proper approval. The inadequacy in supply chain management controls poses a risk to the supply chain and procurement environment (RSA: AGSA, 2013a:70).

Accountability and contracting are popular government themes, both aimed at reforming the delivery of government services and alleviating longstanding concerns about government performance. The contract management officials find themselves managing contractors instead of delivering services. Contracting of massive infrastructure development and huge works involves elaborate and unpredictable relationships between buyers and vendors accounted for and managed effectively (Pollitt & Talbot, 2004:94–95). There have been inadequate contract management practices in national departments.

Durant & Durant (2013:157) posit that contracting is an economic exchange among 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. It transpired in this research, that there was no consistence with regard to contract management in national departments. The overall level of contract management findings is a concern in national departments. The issues of conflicts of interest relating to awards to

employees and close family members was prevalent in the Department of Social Development and is a cause for concern for South African citizens. There were inadequate contract performance measures and monitoring as contracts extended without approval as prescribed by legislation. The public availability of disclosed information in the public sector is also important to ensure accountability, and can reinforce trust in national departments (OECD, 2012:5).

The case studies revealed uncompetitive or unfair procurement processes which could amount to the discrimination of suppliers in national departments. This is against the regulatory framework and relevant legislation. Khumalo, Nqojela & Njisane (2011) (<http://www.casac.org.za>) propagate that tendering procedures designed to provide competition in areas where otherwise it might be absent. It is noteworthy that a crucial feature of the system is that potential suppliers prepare and submit bids independently. In the event that uncompetitive or unfair procurement process prevails, it could suggest that illegal bids and collusion could be taking place in the procurement environment. The Capacity Mechanisms Working Group (CMWG) (2015) (<http://ec.europa.eu/competition>) alludes to the competitive bidding process as meaning the non-discriminatory participation of a sufficient number of bidders.

Lack of supporting documentation for the award process revealed in the case studies as a thorny issue. Lack of proper record keeping and management, specifically with regard to tenders, and failure to appropriately safeguard documentation to support tender procedures emerged in the departments investigated in the case studies (RSA: AGSA, 2013a:70). It could be argued that documentation either did not exist or could not be retrieved because of poor document management. It could be argued that documentation either did not exist or could not be retrieved because of poor document management. Raga (2008:117) is of the view that public sector procurement guidelines issued by government as a prescription of standards of behaviour, ethics and accountability, which it requires for its public. In addition, poor record management created an environment in which it was easy to commit and conceal possible improper or illegal behaviour.

Scope creeping in the case studies came up as a matter requiring leadership to address as it leads to irregular expenditure in the administration of procurement practices. Procurement management, and irregular expenditure, have consistently been the areas with the highest non-compliance for the past five years. The most common non-compliance findings across these case studies relate to irregular expenditure, which has shown no significant movement over the past year. The main contributor to irregular expenditure remains non-compliance by auditees with legislation relating to SCM (Government Communication Information System (GCIS), 2016:2).

The National Treasury (2016c:1-2) confirms that section 38(1) (b) of the PFMA requires accounting officers of departments and constitutional institutions to be responsible for the effective, efficient, economical and transparent use of their respective institutions' resources. Sections 38(1)(c)(iii) and 51(1)(b)(iii) of the PFMA require accounting officers and accounting authorities to take effective and appropriate steps to manage the available working capital of their respective institutions efficiently and economically by implementing control measures that are cost-effective and are recorded and reported in terms of legislative requirements.

Public-sector managers have to adopt an entire array of measures concerning the organisation and management of their activities, which represents implementing their own system of internal control. The implementation and improvement of control systems has been a major concern of administration procurement practices in national departments (Dragos, 2015:125).

The National Treasury (2015d: 10) confirms that reports to the National Treasury by accounting officers and authorities, generated by AGSA, indicate a continuous low level of compliance with the SCM legal framework. The reports show negative results of non-compliance including interruptions to the procurement of goods, services and works; failure to source goods and services at the right price, of unqualified suppliers; and passing over of bids for incorrect reasons. The organs of state apply incorrect

procurement processes in relation to threshold values for quotations and competitive bidding; grant extension of validity periods; and use the limited bidding process incorrectly. 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 have been noted (2015a:10).

The chapter also demonstrated the profound nature, causes, extent and cost of unethical procurement practices shown in literature as procurement fraud and corruption as being available in the public domain. The chapter highlighted non-compliance issues with regard to supply chain management. The case studies of seven national departments on issues of non-compliance with supply chain management demonstrated in this chapter. The chapter concluded by the demonstration of the manifestation of unethical procurement practices in national departments. The issues which emerged related to non-compliance with legislation such as uncompetitive bidding; evaluating and awarding tenders without utilisation of the competent and mandated bid committees; use of incorrect preference point systems; no control systems or measures; inadequate contract management; ineffective enforcement; family members participating in projects; and conflict of interests.

5.6. Conclusion

This chapter analysed the manifestation of unethical procurement practices. The administration of procurement practice impacted by unethical procurement practices. The state of affairs makes it difficult to administer the procurement practices in the South African public sector. Unethical procurement practice fraud involves deliberate misrepresentation of facts and/or significant information to obtain undue or illegal financial advantage. Unethical procurement practices such as procurement fraud; conflict of interest; excluding qualified bidders; failure to meet contract specifications; uncompetitive bidding and obtaining fewer than three quotes all emerged in the study

on the procurement environments. The reasons for unethical procurement practice complicated by non-compliance with legislation; inadequate contract management; unethical practices in the tendering processes; conflict of interest and tender specifications not followed.

The study has shown that, the issues of professionalism and transparency are critical in the administration of procurement practice. Professionalism in public procurement relates not only to the levels of education and qualifications of the workforce but also to the professional approach in the conduct of government business activities. This chapter has highlighted that building an ethical culture requires one also to understand the underlying challenges that may hamper service delivery and compliance with supply chain management legislation. The study demonstrated that accountability and contracting are popular government themes, both aimed at reforming the delivery of government services and alleviating longstanding concerns about government performance. The lack of accountability and control in the procurement processes undermines competition. Lack of high degree of professionalism in public procurement could result in islands such as procurement corruption which can impede compliance with supply chain management legislation. Policies, which national departments construct, govern a set of principles, which establishes the general parameters for an organisation to follow in carrying out its responsibilities. However, there is no enforcement to that effect in national departments.

It emerged from the chapter that the nature of unethical practices related to financial misconduct and procurement practices. The cost of unethical procurement practices reported by agencies outside of government, which does not augur well for public sector. The SIU, PSC and AGSA do not report cost of unethical practices consistently and as such, a vacuum of cost of unethical practices created. The Public Service Commission used to report financial misconduct which can be equated to unethical practices from 2010/11 financial years to 2013/14 financial year. The chapter that follows will analyse the conclusions and recommendations to this study.

CHAPTER 6: PRESENTATION OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

6.1. Introduction

Unethical public procurement practices in the South African public sector have been inadequately researched in the academic field. The rationale for this study is therefore to analyse the administration of procurement practices in the South African public-sector in order to explore the extent, size, nature and manifestation of unethical procurement practices. The study is underpinned by the general research question in terms of whether the administration of procurement practices is anchored by value for money, ethics, competition, transparency, and accountability in the South African public sector. This concluding chapter presents the summary, conclusions, policy interventions, and recommendations regarding the pertinent findings from the seven case studies of national departments categorised under the government guide on clusters: the social protection, community and human development government cluster; namely: the National Department of Cooperative Governance and Traditional Affairs (CoGTA); the National Department of Rural Development and Land Reform (DRDLR); the National Department of Public Works (DPW); the national Department of Basic Education, the National Department of Social Development (DSD); National Department of Human Settlements (DHS);and the National Department of Water and Sanitation (DWS).

Drawing on the qualitative research on the administration of procurement practices, the study examines the administration of procurement practices in the nature, size, extent and cost of unethical procurement practices and the manifestation of procurement practices in national government and suggests the public procurement governance framework to bolster the governance structures. The issue of unethical procurement practices persists in the minds of taxpayers as fragmented public procurement policy reform. It has become clear from these study findings that unethical procurement practices are still a fertile ground to breed more unethical

public procurement issues, as viewed by taxpayers. The administration of public procurement in decision-making and the ongoing unethical procurement practices will be addressed in policy environments, using this study as a case study. To this end, the summary, conclusions, governance framework as a policy intervention, and recommendations resulting from this study, is presented in the ensuing sections.

The first section of this chapter presents the summary of key findings on the study of the administration of procurement practices in the South African public sector, premised within the value for money principle, transparency and accountability. The international case studies and lessons learned; public procurement reforms; administration of procurement practice; nature, size and extent of unethical procurement practices; and manifestation of unethical procurement practices will be represented in this section.

The second section outlines the key recommendations relating to governance structures and mechanisms, which can diagnose the public procurement environment. Such structures and mechanisms relate to the center-led action network; matrix management framework; public procurement advisory structure; ethical leadership; performance monitoring and evaluation; skills development and further training; ethical procurement statements; five-year procurement demand planning; public procurement code of ethics and compliance; enforcement of procurement practices; and public procurement committees. The third section focuses on concluding remarks, and the last section deals with recommendations for further research work. The last section will assist in making this as a case for further research.

6.2. Summary of key findings

This chapter will demonstrate as findings whether national departments adhere to principles of accountability, ethics, transparency, and value for money, as enshrined in the Constitution. The study backed by the principles of value for money,

competition, accountability, ethics and transparency, which is not effectively practiced in national departments. This was evident in Chapter 5, where it was demonstrated that inadequate internal controls; lack of leadership oversight; uncompetitive bidding; not following correct procurement criteria; accepting fewer than three quotations; non-compliance with SCM legislation; and inadequate contract management prevailed. In addition, the monitoring and evaluation of procurement processes and contract management not done effectively. The case studies of international countries, these being China, Germany, Finland and Brazil, and, of course, the international organisation studied created an opportunity in terms of how the administration of procurement legislation, institutional arrangements, procurement procedures and bidding methods can be structured in order to achieve value for money, accountability, and transparency within the South African public procurement environment.

6.2.1. Value for money, accountability, and transparency

The study asked the general question in terms of whether the administration of procurement practices is underpinned by value for money, ethics, competition, transparency, and accountability in the South African public sector. In view of the discussions in this study, the findings revealed that issues of value for money, ethics, competition, transparency and accountability are not seriously considered in the national departments' procurement environments. The general findings were that there is inadequate application of value for money, ethics, competition, transparency, and accountability in the national departments' procurement environment. The AGSA has indicated in various audit reports of national departments from 2011/12 to 2015/16 that the issues of internal control; accountability; compliance with procurement legislation; procedures and processes, professionalism; ethical leadership; records and contract management were questionable.

6.2.2. International case studies and lessons learned

Based on the research question, the case studies in four countries was undertaken in order to learn which areas of procurement practices the South African public sector can replicate going forward. The four case studies countries, namely: China, Germany, Finland and Brazil as analysed, have shown the existence of government procurement regimens in their areas of jurisdiction. These regimens underpinned by Government Procurement Agreements and the Modal Law on Public Procurement, EU directives, Commonwealth laws of the Asian-Pacific area, and the Latin American environments. There are also differences in terms of how they apply their national procurement laws. What is interesting is the emphasis on the transposition of the Government Procurement Agreement of the United Nations, which is imperative in ensuring that there is no discrimination of supplier and buyers from both local space and foreign settings. However, it emerged that China still has observer status at the GPA WTO with regard to taking its national procurement agenda to the next level of transformation.

The China Procurement regulation is however, anchored by national policy imperatives as a tool for socio-economic, “buy China products and promoting SMMEs”. China takes the issues of a supplier’s commercial reputation, financial and accounting system and professional expertise as paramount. Germany has unique Public Procurement Committees-a forum for stakeholders from federal, federal states and local administrations, public-private organisations such as Chambers of Industry and Commerce, and the private sector. The forum contributes to the drafting of procurement rules taking into account private and public sector needs. The German Committee for Supplies and Services Tendering and Contract Regulations (DVAL) works on procurement rules for supplies, services, while the German Committee for Construction Tendering and Contract Regulations (DVA) contributes to procurement rules for public works.

Highly qualified professionals staff operate in the Brazilian procurement environment, while procurement as practised in Finland has a procurement authority advisory unit that guides procurement stakeholders with regard to procurement continuum. The Finland Procurement Advisory Unit is an independent body advising government and procurement authorities on procurement practice and regulations. Finland procurement system is characterised by a harmonised and decentralised environment. With unethical procurement practices hovering over the procurement environment, South Africa can learn from the practices disclosed in the case studies and replicate best practices.

6.2.3. Public procurement reforms

The study on the administration of procurement practices is located in the claim in literature that public procurement is viewed as a socio-economic tool to enhance and improve development. Specifically, this study positions public procurement within a particular context and demonstrates that issues of unethical procurement practices and their manifestation pose a serious challenge and can hamper the government objectives and development imperatives.

The South African public sector has undertaken several reforms since the advent of democracy in 1994. The intention of the procurement reforms was to modernise the management of the public sector, and to make it more people friendly and sensitive to meeting the needs of the communities it serves. It is worth noting that public procurement reforms implemented in South Africa since 1994 has contributed positively to some degree. Nearly two and half decades of implementation of such reforms has chalked up some successes in terms of the creation of procurement principles in the Constitution. Further, including the introduction of a number of legislative measures, of which the adoption of the Public Finance Management Act (PFMA) (Act 1 of 1999) (RSA, 1999b) and the Preferential Procurement Policy Framework Act (PPPFA) (Act 5 of 2000) (RSA, 2000c) and its regulations are among the most germane. Any improvement brought about by such reforms benefits a very

large population of beneficiaries. The procurement reform in South Africa brought procurement systems with a view to promote socio-economic goals relevant to previously disadvantaged communities. In addition, they incorporated into legislation to eliminate discrimination in the tendering processes. The PPPFA and its regulations reformulated since 1998 and to an extent generated some positive spin-offs to the administration of procurement practices in the South African public-sector, for example, the promotion of small businesses with procurement procedures and processes that accommodated such businesses.

In addition, the 2015 review of SCM within the South African public-sector procurement environment took place. Another milestone was the establishment of the Office of the Chief Procurement Officer in 2015, whose responsibility is to modernise the state procurement system to be fair, equitable, transparent, competitive, and cost-effective. This enables the economic, effective and transparent utilisation of financial and other state resources and assets, improved service delivery, promote, support, and enforce the transparent, effective management of the state supply chain and the sound stewardship of government assets and resources.

However, the administration of procurement practices is still viewed in a double-sided picture, one in which the legislation has positioned good practice and the other where the procurement environment is marred by unethical procurement practices. Issues of unethical procurement practices impede the principles of public administration, accountability, value for money, probity, transparency, and competition. It is clear that addressing unethical procurement practices is an area needing further reforms if the administration of procurement practices in the South African public sector is to be successful.

6.2.4. Administration of procurement practice

The study framed under the premise that procurement practices involve sound procurement legislation and professional ethics within the public-sector procurement

environment. The study of the administration of procurement practices emphasised accountability, transparency, and value for money in the administration of procurement practices in national departments. The focus was also on important dimensions such as procurement legislation, institutional procurement arrangements, procurement procedures, and mechanisms that seek to ensure that public procurement contracts are enforced and remedies put in place.

The administration of procurement practices in the South African public needs to follow a particular trajectory, focused on the future in terms of how the public sector can enhance governance of procurement practices through value for money and accountability. The state of affairs needs to determine in terms of what instruments can address the manifestation of unethical procurement practice. Drawing extensively on the above, the study analysed the “administration of procurement practices” and explains why unethical procurement practices in national department is so problematic. With empirical evidence from the Auditor-General South Africa, SIU, PSC, and other information in the public domain, this study suggests alternatives as policy interventions to close the gap in the administration of the procurement practice in the South African public sector.

The study demonstrated that governments globally harmonise the procurement procedures and standards by working together in collaboration effort with international procurement bodies. The instruments applied are the Government Procurement Agreement (GPA) and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services (1994) (later on superseded by the 2011 Model Law on Public Procurement). The Model Law on Public Procurement, which contains procedures and principles, is aimed at achieving value for money and avoiding abuses in the procurement process. The Model Law on Public Procurement promotes objectivity, fairness, participation and competition. In addition, integrity and transparency are also key principles, allowing visible compliance with the procedures and principles confirmed. What does the instruments WTO GPA and UNCITRAL Model law on

Public Procurement of Goods, construction and services mean for the South African public sector? The instruments mean that they are catalytic for the harmonisation and standardisation of the administration of procurement practices and South Africa should tap into the infrastructure available internationally for the benefit of the domestic customers and suppliers.

To this end, the lesson drawn from the findings of the study is that sound public procurement practice needs to have good procurement laws and regulations, which clearly cover the whole scope of public procurement at all stages of the procurement processes; methods and procurement; ethics, and transparency. The administration of public procurement practices if not aligned to procurement manuals and guide public procurement practices can be problematic, as competition will be stifled. Public procurement organisation or institutional arrangement is an investment in the administration of public procurement practices. In the field of administration of public procurement practices, there must be a structure or an organisation to facilitate and coordinate the procurement of goods, construction and services in order to ensure efficient and effective functioning of procurement activities. Public procurement organisational structures should be equipped with sound infrastructure to administer procurement practices effectively. The quality workforce is an important ingredient for the success of the procurement environment. To achieve the objectives of this chapter, case studies representing countries, with varying international influence as well as differing socio-economic and policy-level contexts, were compiled.

The study has taken stock of the state of play in the administration of procurement practices. Building on the lessons of the public procurement regimens, institutional arrangements, procurement procedures and processes, remedies and enforcements as well, of the case studies countries. Analysing the objectives of the WTO GPA and UNCITRAL Model Law on Public Procurement of goods, services and works that the case studies countries pursued shed some light on how to create favourable conditions and the enabling procurement environment for the South African public sector to can replicate.

6.2.5. Nature, size and extent of unethical procurement practices

The study highlighted that the nature, size and cost of unethical behaviour is not well researched and documented in the South African public sector. Unethical procurement practices such as procurement fraud is a deliberate deception intended to influence any stage of the procure-to-pay lifecycle in order to make a financial gain or cause a loss. It can be perpetrated by contractors or sub-contractors external to the organisation, as well as staff within the organisation.

Unethical procurement practice may take place at any stage of the procurement cycle, but especially during prequalification and tendering phases. The nature of unethical procurement practice differs between the two core stages of the procurement lifecycle: pre- and post-contract award. Unethical procurement practice in the pre-contract award phase is complex, often enabled by a lack of compliance with policy, but also involving activity such as collusion and corruption, which can be difficult to detect. Unethical procurement practice in the post-contract stage is considerably different. As contracts are already in place, most cases of fraud tend to involve overpayments to contractors, through false or duplicate invoicing, and payments for substandard work or work not completed under contract terms.

The consolidated audit outcomes report for the period 2010–2015 by the Auditor-General of South Africa (AGSA) highlighted a lack of accountability and the public sector frequently underestimates how important supplier management is. There is limited understanding about how public-sector decisions and actions affect the overall business environment, and suppliers often take advantage of the weak public-sector procurement management environment. The shortcomings in the public procurement processes include high prices paid for goods and services; contracts that favour certain suppliers; appointment of suppliers who are not tax compliant; and failure to use competitive processes for quotations and bids.

The incorrect use of the preference points system; lack of appropriate bid committees, use of unqualified suppliers and passing over of bids for incorrect reasons are emerging in the administration of procurement practice. In addition, the use of incorrect procurement processes in relation to threshold values for quotations and competitive bidding were apparent in procurement environments. The appointment of bid committee members not aligned with policy requirements were also cause for concern. Procurement practitioners do not bother to motivate for deviations as insufficient motivation for deviations from procurement procedures; collusion; unethical behaviour; non-performance; poor-quality products and services rendered; and absence of accountability are the order of the day in the procurement environment.

The causes of unethical procurement practices relate to the soft-state syndrome, where citizens have a weak or diffuse sense of national interest and do not have a commitment to public service. The absence of efficiency and professional, competent, and committed bureaucracy is an important contributor to bureaucratic corruption in countries. Public servants can view public service as an opportunity for self-enrichment. To this end, national elites would turn state structures into instruments of plunder, which they use to extract benefits for themselves and their families. The public service no longer performs its traditional functions, which include promotion of national development and advancement of the national welfare. The public servants whose job it is to design and implement programmes to improve the national welfare actually promote economic policies, which generate benefits for themselves and their political benefactors. The causes of unethical procurement practices are contextual, rooted in a country's policies, bureaucratic traditions, political development, and social history.

Unethical procurement practices in public procurement attributed to a combination of socio-economic factors. The most critical is poor governance, manifested by a lack of transparency, weak accountability, and a lack of integrity by public officials entrusted with procurement. Failure to follow appropriate SCM procedures and transgressions

in the SCM generated issues of irregular management of SCM processes and perceptions of corruption, which had a damaging effect on the country's citizens as well as investor appeal (RSA: PSC, 2011d:13–17).

In South Africa, the size and cost of unethical procurement practice has not received attention and been documented properly. However, various pieces of information sourced from the informal sector, indicates that South Africa loses about R25 billion every year to fraud in government procurement relating to textbooks not arriving on time at schools; shoddily built RDP houses; and tender rigging. Service delivery protests are a sign that people feel that they are not receiving the quantity or quality of services they need. Schools sometimes open at the start of the year without learner support materials. The Special Investigating Unit (SIU) estimates that 20–25 percent of state procurement, representing approximately R180 billion, is lost each year because of unethical procurement practices. Other sources estimate that South Africa loses between R50 billion to R150 billion annually because of unethical procurement practices. The PSC endeavored to collect general unethical information and statistics since 2010 to 2013/14 linked to procurement practices. Since, 2013/14 information such as general unethical financial conducts is no longer generated. Unethical procurement practices of this type and magnitude undermines state legitimacy and service delivery. It furthermore, distorts market competition, increases the cost of doing business, and decreases the ease of conducting business.

The direct costs of corruption include loss of public funds through misallocations or higher expenses, and lower quality of goods, services and works. Those paying the bribes seek to recover their money by inflating prices; billing for work not performed; failing to meet contract standards; reducing quality of work; or using inferior materials, in the case of public procurement of works. This results in exaggerated costs and a decrease in quality and infrastructure development workmanship.

6.2.6. Manifestation of unethical procurement practices

It emerged from the study that the South African public sector has challenges with regard to the procurement or supply chain management practices in national departments. The Auditor-General of South Africa (AGSA) exercises ex-post judicial oversight to ensure the conformance of publicly funded institutions with the laws and regulations governing their activities. The study found that, deviation from internal control systems were apparent in the overall audit outcomes performed by the AGSA dating from 2011/12 to 2015/16. The study demonstrated that these deviations from internal controls were largely in respect of compliance with key legislation in the area of supply chain management. Compliance with public supply chain management (SCM) rules, legislation, norms and standards is critical to ensure that government's policy objectives are achieved and sustained. The study has demonstrated inadequacy in professionalism in public procurement that result in islands such as procurement corruption, which could impede compliance with procurement legislation. Non-compliance with public procurement legislation has been associated with lack of professionalism in the procurement environment. This study has depicted some wider and far-reaching consequences of unethical supply chain management and procurement practices.

It is noteworthy that, despite the SCM policies, there seems to be a manifestation of unethical procurement practices in the selected national departments. Non-compliance with key legislation remains at high levels, and irregular expenditure continues to be an area of particular challenge in national departments. The monitoring of public procurement plays an important role in all national public procurement systems. Leadership did not take appropriate action with regard to a lack of controls in the finance and SCM directorates, resulting in non-compliance, with such non-compliance remaining undetected until the audit. Furthermore, the study found that dysfunctional records management undermines legal and judicial reform, creating room for corruption or collusion in the procurement environments. This state of affairs negatively affects enforcement and reduces compliance.

The study found that, non-compliance with public procurement policies has been associated with lack of professionalism. It is notable that despite the adoption of codes of conduct and numerous regulations aimed at nurturing and propagating professionalism amongst practitioners, suppliers and administrators, issues of unethical procurement establishments, systemic procurement fraud and corruption continue to make professionalism mileage in the administration of procurement practices. Professionalism in public procurement relates not only to the levels of education and qualifications of the workforce but also to the professional approach in the conduct of government business activities. Building an ethical culture requires that one should also understand the underlying challenges that may hamper service delivery and compliance with supply chain management legislation. Internal controls are the point of departure regarding sound financial management and administration. Internal controls provide a reasonable assurance that public organisations will deliver quality services in an efficient manner, in accordance with planned outcomes. Internal controls also safeguard public resources against waste, and maintain reliable financial and management information. In addition, internal controls ensure compliance with applicable legislation.

It emerged from the study that the control environment is the foundation and anchor of the ethics climate because it sets the tone-at-the-top. Furthermore, the tone-at-the top is an important factor in determining the role played by internal controls and the expected conduct within the organisation. In addition, management's role in oversight seems inadequate; there is a lack of consistency in how procurement is practised, the prospect of work carried out becomes unlikely; and integrity and public confidence are lost. It is notable that non-compliance will include non-compliance with advertising procedures; application of unlawful contract awards; application of incorrect selection criteria; an insufficient or discriminatory definition of the subject matter of the contract; and negotiation during the award procedure.

The study has shown that there are inadequate contract management practices in national departments. The issues of conflicts of interest relating to awards to

employees and close family members by national departments is a cause for concern for all South African citizens. Lack of proper record keeping and management, specifically with regard to tenders and failure to safeguard documentation appropriately to support tender procedures, cannot be left unattended, not in the procurement environments.

The study provided insight as to how the organs of state use incorrect procurement processes in relation to threshold values for quotations, competitive bidding; extension of validity periods; incorrect use of the limited bidding process; 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.

The principles of “value for money, ethics, competition, transparency, and accountability guided the study”, and presented as a general question:

“Is the administration of procurement practices underpinned by value for money, ethics, competition, transparency, and accountability in the South African public sector?”

In view of that, the study can conclude that, with regard to the administration of procurement practices, national departments do not take the principles of “value for money, ethics, competition, transparency, and accountability” seriously. Such a conclusion stems from the manifestation of unethical procurement practices exposed by the study. However, this state of affairs needs further research. The study has identified some gaps in terms of the administration of procurement practices in South Africa in the areas of contract management; conflict of interest; inadequate internal control practice; use of incorrect point systems; non-compliance with legislation; and uncompetitive bidding. The above findings warrant a transformed approach to stamping out unethical procurement practices in the procurement environment. The demonstrated gaps point to issues of sheer perennial governance challenges in the

administration of public procurement practice. In order to close the gaps, the study is recommending a “Public-Sector Governance Procurement Framework”.

6.3. Key recommendations

The case studies from China, Germany, Finland and Brazil procurement practices emerged with pertinent procurement practices, which can guide the South African public sector and the administration of procurement practices in general. The issues of legislation, institutional arrangements in terms of the professionalisation of the procurement environment, and application of procurement procedures were focused on. The purpose of the international study cases was to demonstrate that there are other countries applying procurement practices and to demonstrate how they succeed in applying such procurement practices. South Africa is lacking generally with regard to effective governance structures and its ability to enforce the procurement standards articulated in the procurement legislation and regulation. Based on the findings from the case studies countries, informed recommendations can be made and linked into the administration of procurement practices in the South African public sector.

In order to govern the administration of procurement practices effectively, there is a need to have an envisioned public procurement governance framework underpinned by a center-led action network, as practised in Germany. The German Public Procurement Committee practice is another governance structure, for replication. A Public Procurement Advisory Unit/matrix approach as practised in Finland and the professionalisation of the procurement environment as practised in Brazil are cases for consideration. In addition, China has formulated public procurement socio-economic development tools to promote small business enterprises, which is another practice worth noting.

6.3.1. Governance structures

The unethical procurement practices as they relate to procurement fraud and corruption is a broad and largely hidden phenomenon, and only elements of corruption related to public procurement in a number of organ of states reviewed or studied. The need to measure the costs of corruption as broadly felt is a foundation for the design and implementation of effective, efficient and proportional anti-corruption policies and practices. The South African public sector spends an absorbant money on public procurement, which is at a region of R500 annually. The section that follows will focus on recommendations for the responsible and responsive governance structures, procurement infrastructure mechanism, systems and procedures, and responsive ethical leadership, towards the “Public-Sector Governance Procurement Framework” proposal.

In recent years, procurement practitioners have increasingly recognised the importance of ensuring behavioural compliance with ethical standards through a governance structure. Deloitte (2013:5–6) and Chartered Institute of Public Finance and Accountancy (CIFAC) (2013:14) define “governance structure” as an ethics infrastructure that contains the tools, systems and conditions for motivating and enforcing high standards of conduct among a workforce. It is worth noting that, governance structures can take many forms, but all include systematic policies and procedures to monitor impartially compliance with an ethical code, ethical mission, or other form of articulated standards of conduct deemed as being vital to the contracting authority concerned. Getting there requires clear public procurement ethics and full support across the public sector, especially the procurement organisation.

A procurement ethics infrastructure is a set of values and principles to observe and respect. It includes laws and by-laws regulating issues related to ethical behaviour; as well as internal acts (codes of professional ethics, policies, guidelines, and manuals, among others). Furthermore, ethics infrastructure details and implement the legal

provisions, institutions and/or mechanisms responsible for promoting, controlling and monitoring ethical behaviour (European Organisation of Supreme Audit Institutions [EUROSAI], 2013:9, 59).

In addition, ethics frameworks designed, anticipated, and preventing certain specific types of unethical procurement practices such as conflict of interest, bidding collusion, bribery, and inappropriate actions. Public procurement ethics codes and standards of conduct must have a context and fit for purpose. One of the most important elements is an effective and efficient administration of procurement practices. Procurement ethics training or ethics education are not a 'once-off' inoculation. It should be emphasised that, ethics frameworks instruction can become obsolete, and people forget the principles. In addition, circumstances change, responsibilities increase, and procurement laws and regulations need modification. It is emerging that most rigorous ethics regimens embark on a strategy and emphasises regular, ethical framework for the administration of procurement practices. The procurement frameworks regimen cannot be overemphasised because, they are organic, and procurement authorities who do not have regular means of revision confronted with obsolete and inapt standards, will cease to exist. Undoubtedly, even the most value-laden ethical framework needs a means of enforcement (Gilman, 2005:55).

The study emphasises that, procurement frameworks are not self-implementing, printing and placing a copy on a wall does not practise the principles. To this end, national departments take into account that there must be an institutional fabric for developing the framework; communicating; interpreting; training or education on the code; enforcing it; and assessing it (Gilman, 2005:25). In addition, whether one is adding a new framework or refreshing an old one, it is important to have an understanding of the culture in organisations. Moreover, good practice requires effective frameworks to have an environment that nourishes them and allows development, which environments can be created by political and administrative leadership. The national department must note that, those writing frameworks should

clearly understand the trade-offs between breadth and specificity, as frameworks can cover a variety of behaviour. As indicated above, good practice requires deciding on the geography of the framework, and planners must decide whether there will be one uniform national framework applicable at national, provincial and local levels or an individual procurement authority.

This study therefore proposes a focused the “Public-Sector Governance Procurement Governance Framework” for use by public-sector SCM managers and practitioners, who abound within the procurement environment. The proposed framework will ensure continuity in the administration of procurement practice in that the state of affairs requires the development of differentiated formal institutional arrangements allowing the South African public sector to act on immediate procurement priorities without sacrificing longer-term procurement undertakings. The development of this framework presents an opportunity to enhance the nature, scope, extent and level of integrated public procurement practices in South African procurement administration. The framework identifies the center-led action network (CLAN); the matrix model; a public procurement advisory structure; responsible, responsive and ethical leadership; a code of procurement ethics; and ethical procurement statements.

6.3.1.1. Center-led action network

The organisation that operates through a number of branches or divisions, perhaps separated by considerable distances, may consider a center-led action network (CLAN). A center-led action network (CLAN) with regard to procurement is an organisational framework launched in 1991. The CLAN model is still the approach preferred by high-performing group organisations. In the CLAN model, action takes place in the businesses while networking between them driven from the center. The CLAN structure is a situation where a central purchasing authority, operating on the strategic and tactical level, and found at a corporate level. For a contracting authority with several purchasing sites or for a contracting authority on a single large site, a CLAN approach can work well (Firozi, 2013:15). This type of purchasing authority is

often responsible for needs/demand specification, supplier selection, contract negotiations, and coordination of activities, while the corporation's different business units conduct the operational procurement activities (Van Weele, 2005:13-14).

Unquestionably, in a center-led action network (CLAN) approach to procurement, experienced procurement officials work with key stakeholders. This model facilitates local involvement in procurement while organising and coordinating the total effort of the procurement team through the network. The state of affairs is able to have maximum impact for the purchasing contracting authority. The CLAN concept involves small central teams of procurement officials who set policy; monitor statistics; co-ordinate efforts; and manage common systems and processes. They are experienced procurement specialists, who in proximity to the stakeholders, using the goods and services they procure, and embedded in the local team. Collaboration takes place between central and local teams on procurement, which have an impact on one or more stakeholder areas in local purchasing procurement. The CLAN model enables local and central accountability, functional excellence from centre-led resources, and synchronised action in the form of procurement plans with stakeholder buy-in.

6.3.1.2. Matrix management framework

As opposed to CLAN, the Matrix approach tries to gain the best of both worlds by organising itself to address specific needs. In the matrix model, contracting authorities may have some central specialists and some local resources. In addition, procurement needs arise, the central team attempts to draw upon the expertise of officials and other experts in all areas to provide input and to manage the procurement environment. The matrix concept may involve a team assembled from various areas for a single project:

- (i) A team assembled from various areas meeting monthly to address the total requirements of the purchasing contracting authority for a commodity area;

- (ii) Specialists co-opted from other functions; and
- (iii) Participation of certain officials and experts for specific parts of the process.

The matrix approach can ensure that everyone with a stake in a given project or ongoing requirement is involved. The matrix draws upon resources as and when needed, allowing individuals to return to their normal jobs when they are no longer needed, and provides the advantages of central procurement, focused on specific requirements with local buy-in.

6.3.1.3. Public Procurement Advisory Structure

The important functions should be in place to support contracting authorities/entities as well as economic operators in their respective tasks to enable them to act efficiently and in compliance with national legislation and the fundamental principles of good practices. The existence of a body that provides advice on the application of the legal framework and other related matters is crucial. In addition, legal advisory functions are the responsibility of centrally placed public procurement bodies. Moreover, some of these functions shared and exercised by a great number of players within the public procurement community, for example, associations for provincial and local governments, large contracting entities and utilities, the private sector (consultants and law firms), chambers of commerce, and associations of small and medium-sized enterprises.

6.3.1.4. Ethical leadership

The principles of responsible and an ethical leadership should prevail in national departments. These principles can benefit national departments in terms of value towards the realisation of good governance as they relate to ethical culture, good performance, effective control, and legitimacy. The leadership should serve as the focal point and custodian of corporate governance. To that end, the leadership should govern in a way that is compliant with applicable legislation, and adopt non-binding

rules, codes and standards that support the organisation in being ethical and a good corporate citizen.

6.3.1.5. Performance monitoring and evaluation

Performance monitoring in the administration of procurement practices poses a serious problem. The national departments would not be experiencing non-compliance with SCM legislation if monitoring and risk management were part of their plan. It is therefore imperative that procurement performance monitoring reviewed, especially in the administration of procurement practices in the South African public sector.

6.3.1.6. Skills development and further training

Skills programmes are of the utmost importance for staff working in the procurement environment. There is a need to develop skills development programmes for procurement practitioners. The staff assigned with the administration of procurement practices should be assessed and appraised from time to time and at monthly, quarterly and annual intervals to determine whether they are performing according to the procurement set standards.

6.3.1.7. Ethical procurement statements

Issues of ethical procurement practices and governance are important in the global village. The study argues that, ethics statements should form part of the procurement authority's pledge to the code to practise and apply understanding and commitment, ethical practice, professionalism, and accountability in the administration of procurement practices. The procurement function itself carried out in a cost-effective way, and the procurement authority should foster value. However, there is a need for a focused approach in terms of the procurement ethics statements, which are currently not effective. The procurement ethics statement pledged by any

organisation, small or large, in the public or the private sector, to demonstrate its corporate commitment to the principles of ethical procurement.

The statement should be a set of principles, which presents the values, business culture, and practices to which organisations held accountable (CIPS, 2014; UNDP, 2011:2–4; Wulff, 2010:4–7; Cleland, 2017:3–7). The ethical procurement statements built on the idea of accountability and structure in order to consider the issues of ethical practices and governance. The accountability and good governance of these processes then demonstrated within one of the above structures. All contracting authorities must have written statements that govern the administration of procurement practices.

The objective of governance/policy and procedure statements and the supporting documentation is to make sure that everyone within the contracting authority is aware of the organisation's expectations. Good governance documentation statements facilitate clarity of purpose within procurement and across the contracting authority, and clearly presented in the statement. The appropriate corporate governance and compliance, certification to established standards, continual professional development of procurement staff, and consistent delivery of business objectives should be emphasised. The ethics statement should indicate risks taken when effective governance documentation is lacking. Undoubtedly, contracting authorities working without effective policies and procedures to govern their procurement activities expose themselves to risks of poor cost control and can increase exposure to procurement fraud and corruption.

Certainly, contents of a public procurement governance statement should include a statement defining the extent to which the governance applies, as well as a signed statement from the head of the contracting authority mandating good governance and accountability. Specific descriptions of the processes and procedures that the procurement team and stakeholders are required to undertake should be provided in the statement. Statements of the role of internal and external auditors, an indication

of sign-off by internal audit, and the endorsement of an internal audit committee are critical areas of the ethics statement.

Significantly, specific statements should take the following matters into account: controls on authorisation of expenditure, or budget control; authority to approve claim settlements; authority to approve a single tender action; authority to approve variations; authority to contract commitment; authority to make payment or accounts payable; compliance; and improvement. In addition, the statements should reflect on delegated powers under procurement contracts; the accounting officer/executive; self-audit; separation of duties; good-practice notes; and how procurement processes must be audited. The statements should provide accountability, and role accountability for policy and processes placed at the highest level of the contracting authority. Procurement officials' competency measurement and development; induction training for beginners; compliance audit and self-audit protocols are paramount; benchmarking or peer comparison; accreditation or certification by a professional body; and self-assessment are also critical in formulating the statements.

6.3.1.8. Five-year procurement demand planning

Five-year demand planning linked to the strategic planning and MTEF of government. This innovative procurement process entails a period, and it would be better to define an approximate quantity of public needs for at least five years. This type of planning will provide significant data, as well as types of and quantities of public needs, for the second stage. Five-year demand planning and item forecasting should apply to all items to be procured, whether big, medium or small; infrastructure and non-infrastructure; housing projects; highway projects; and multi-purpose contracts relating to infrastructure. Five-year demand planning is not an annual performance plan of national departments and entities. It is a separate planning tool, which can relieve the public sector from the scourge of procurement corruption. The five-year demand plan should have a breakdown of items as indicated above to be procured annually and built up for a five-year period. All organs of state and entities should sign

a Service Level Agreement (SLA) with the OCPO, agreeing that those items procured as planned. Deviation from that will mean the AO or AA will face consequences of such unethical procurement practices. The allocated budget from the fiscus should be equal to the projected amount in the five-year procurement demand plan, plus an inflation rate to cover escalation costs.

6.3.1.9. Public procurement Code of Ethics and Compliance

The pitfalls and perennial governance challenges faced by the national departments cannot be overemphasised; as such, the usefulness of the public procurement Code of Ethics and Compliance can be used as catalytic mechanisms to address the procurement challenges. The public procurement environment of the 21st century should consider implementing the following good practices for ensuring effective internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting unethical conduct:

- (i) Strong, explicit and visible support and commitment from senior management to the company's internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery, and a clearly articulated and visible corporate policy prohibiting unethical conduct;
- (ii) Compliance with this prohibition and the related internal controls, ethics, and compliance programmes or measures is the duty of individuals at all levels of the company. Oversight of ethics and compliance programmes or measures regarding unethical conduct, including the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards, is the duty of one or more senior corporate officers, with an adequate level of autonomy from management, resources, and authority; and
- (iii) Ethics and compliance programmes or measures designed to prevent and detect unethical conduct, applicable to all directors, officers, and employees, and applicable to all entities over which a company has effective control.

6.3.1.10. Enforcement of ethical procurement practices

There is a need to enforce the administration of procurement practices. The procurement regulations are clear about enforcement, but it is not practised as intended. This is proved by continuous non-compliance with SCM policies

6.3.1.11. Public Procurement Committees

The South African sector procurement environment should establish a Public Procurement Committees, which are a forum for stakeholders at national, provincial and local levels, public-private organisations such as Chambers of Industry and Commerce, and the private sector with specific responsibilities. This structure can improve the administration of procurement practices in the public sector.

6.4. Concluding remarks

In this section, the main objective will be to formulate the concluding remarks. There are still many questions left unanswered about unethical procurement practices. However, it has been possible to establish that the study has at least drawn some important *prima facie* unethical procurement practices from the AGSA audit outcomes reports from 2011/12 to 2015/16 as well as the SIU annual reports, which have shed some light on procurement corruption in the South African public sector. The researcher contends that turning away from historical evidence because is deemed complex and dangerous (although this is true) keeps South African citizens from being able to understand the past and to imagine different futures. There is a need to develop paradigms of analysis that will allow the public sector to perceive and interpret both the AGSA reports and those of the SIU. Such an analysis must allow for dissonance, contradictions, and even discomfort as studied, only then will the South African government, citizens and academics, and perhaps the world, be able to move forward with the work of shaping new procurement reforms and new possibilities for an extraordinary experience linked to the South African public sector.

6.5. Recommendations for further research work

The study has demonstrated further research opportunities, which recommended for attention. There is a need to address the issue of capacity in national departments to exercise oversight functions on unethical public procurement practice. This research on public procurement will focus and attract the attention and interest of researchers. The study highlighted several areas where information is lacking. The research was able to address some of the key issues relating to unethical procurement practice by the research in this dissertation, however, others, remain. In particular, there is a lack of readily available and tangible information regarding unethical procurement information in the public domain already been experienced. More complex statistical analysis and quantitative analysis beyond descriptive statistics will be an answer as to the actual nature, size and cost of procurement corruption in the public sector. Future research can determine in time how realistic they are; which research will help to confirm. Future studies may, look for trends regarding the nature, size, and cost of unethical procurement practices in the South African public sector.

There are a number of additional areas for further research highlighted in the thesis. These include further investigation of the possibly of the establishment of an advisory unit distinct from the Office of the Procurement Officer and Public Procurement Committee as practiced in Finland and Germany respectably. The manifestation of unethical procurement practices in the South African public sector is another area for further research, for consideration. This would give a better impression of overall understanding in terms of where South Africa is with regard to manifestation of unethical procurement practices. The analogue approach used in this research to estimate the unethical procurement practices may be usefully applied to other research projects in South Africa and internationally.

BIBLIOGRAPHY

- Afoakwa, K.O. 2012. What makes corruption in the public procurement process awful? *International Journal of Development and Sustainability*, 1(3):622–633.
- Aidt, T.S. 2011. Forum. The causes of corruption. What and where. *CESifo DICE Report*, 9(2):15–19.
- Albert, A. 2011. SA public procurement ‘vulnerable to waste and corruption’. Supply Management, 24 February. Available from: <https://www.cips.org/supply-management/news/2011/april/study-reveals-common-causes-of-corruption-in-south-africa/>. (Accessed 7 October 2017).
- Albrecht, W.S., Albrecht, C.O., Albrecht, C.C. and Zimbelman, M.F. 2012. *Fraud examination*. 4th ed. Mason (OH): South-Western.
- Allen, A. 2010. *Player and referee: Conflicting interests and the 2010 FIFA World Cup*. 6 May. South Africa-based Institute for Security Studies. Available from: <http://www.supplymanagement.com/news/2010/book-highlights-world-cup-procurement-shortcomings/>. (Accessed 7 October 2017).
- Ambe, I.M. and Badenhorst-Weiss, J.A. 2012. Procurement challenges in the South African public sector. *Journal of Transport and Supply Chain Management*, 6(44):242–261.
- Amoral, M.M. 2011. *Analysis of the principle of administrative efficiency applied to public procurement in Brazil*. The Minerva Program. Spring 2011 IBI. The Institute of Brazilian Business & Public Management Issues/George Washington University Washington, DC.
- Anand, 2011. *3 Main economic functions of a modern government in a mixed economy*. Available from: <http://www.preservearticles.com/201104125311/3-main-economic-functions-of-a-modern-government-in-a-mixed-economy.html>. (Accessed 7 October 2017).
- Ankita, 2011. Various theories put forward regarding the purpose of the state: Is the state an end or a means to an end? Available from: <http://www.preservearticles.com/201106248485/various-theories-put-forward>

regarding the purpose of the state is the state an end or means to an end.html.
(Accessed 7 October 2017).

Appel, J.J and Plant, K. 2015. A framework for internal auditors to assess ethics in a national public sector department. *South African Journal of Accountability and Audit Research*, 17(2):57–69.

Arrowsmith, S. (Ed). 2010. *Public procurement regulation: An introduction*. The European Union Asia Inter University Network for Teaching and Research in Public Procurement Regulation. University of Nottingham.

Arrowsmith, S. 2011. EU public procurement law: An introduction. *Public Procurement Law Review*, 20. London (UK): Sweet and Maxwell.

Arrowsmith, S. and Quinot, 2013. *Public procurement regulation in Africa*. Cambridge (UK): Cambridge University Press.

Arrowsmith, S. and Trybus, M. 2003. *Public procurement: The continuing revolution*. The Hague (NL): Kluwer Law International.

Aziz, M.A, Rahman, H, Alam, M and Said, J. 2015. *Enhancement of the accountability of public sectors through integrity system, internal control system and leadership practices: A review study*. 7th International Conference on financial Criminology, 13–14 April 2015, Wadham College, Oxford, United Kingdom.

Basheka, M.J. 2012. The paradigm of public administration reexamined: A reflection. *Journal of Public Administration*, 47(1):25–87.

Bauld, S. and McGuinness, K. 2010. Leadership and procurement. *Summit*, 12(8):8–10, January. Available from:
http://www.summitconnects.com/Articles_Columns/PDF_Documents/20100101/SummitMagazine_Jan10.pdf. (Accessed 20 October 2017).

Becq, B. 2006. *Procurement reform and capacity building: Shortcuts and tools to facilitate the implementation of sound public sector procurement systems*. Paper presented at the 2nd International Public Procurement Conference, 21–23

- September, Rome, Italy. Available from: <http://www.ippa.ws>. (Accessed 3 October 2017).
- Begg, D, Vernasca, G, Fischer, S and Dornbush. 2011. *Economics*. 5th ed. London: McGraw-Hill.
- Bergman, I.M, Ståhlberg, A Dreyer, R, Standley, M and Jonsdottir, E.R. 2012. *Mainstreaming GPP in the Nordic countries: A scoping study*. Copenhagen (DK): Council of Ministers.
- Bianchi, T and Guidi, V. (eds). 2010. *The comparative survey on the national public procurement systems across the PPN*. Authority for the Supervision of Public Contracts/Department for the Coordination of European Union Policies. Rome, Italy.
- Bolton, P. 2006. Government procurement as a policy tool in South Africa. *Journal of Public Procurement*, 6(3):193–217.
- Bolton, P. 2008. The public procurement system in South Africa: Main characteristics. *Public Contract Law Journal*, 37(4):781–802.
- Bolton, P. 2016. Public procurement as a tool to drive innovation in South Africa. *ER/PELJ*, 19:1–35. doi <http://dx.doi.org/10.17159/1727-3781/2016/v19n0a1286>
- 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):96–108.
- Bovaird, T and Löffler, E. 2010. *Public management and governance*. 2nd ed. New York (NY): Routledge.
- Bovis, C. 2012. *EU procurement law*. 2nd ed. Cheltenham (UK): Edward Elgar.
- Brakalova, M. 2016. *The international comparative legal guide to public procurement 2016. A practical cross-border insight into public procurement*. 8th ed. Berlin (DE): Global Legal Group.

- Brazil, Federal Republic of Embassy of Brazil in South Africa. 2017. *Trade and investment: Legal aspects*. Johannesburg (ZA): Embassy of Brazil in South Africa.
- Brown, A. 2010. *Corporate fraud*. Pearse Street, Dublin (IE): The Institute of Chartered Accountants.
- Burgi, M. 2012. Public procurement law in the Federal Republic of Germany: Annual report. *Ius Publicum Network Review*, 2(1).
- Capacity Mechanisms Working Group (CMWG). 2015. *Designing a competitive bidding process, and ensuring competition between new and existing capacity*. Available from: http://ec.europa.eu/competition/.../capacity_mechanisms_working_group_april2015.pdf. (Accessed 20 October 2017).
- Caulfield, T. 2010. The anatomy and elusiveness of procurement fraud. *Journal of the Association of Inspectors General*. New York: Inspectors General Institute.
- Cawe, A. 2014. *Programmatic procurement: A political economy review of the Transnet freight rail competitive supplier development programme*. ERSA Working Paper 448.
- Chamberland, D and Ling, T 2012. *Global public procurement handbook 2012 edition. With UNCITRAL's model law on public procurement with commentary*. San Francisco (CA): Baker and McKenzie LLP.
- Chartered Institute of Public Finance and Accountancy (CIPFA) and the International Federation of Accountants (IFAC). 2013. *Good governance in the public sector: Consultation draft for an international framework*. London (UK): CIPFA and IFAC.
- Chartered Institute of Purchasing & Supply (CIPS)/National Institute of Government Purchasing (NIGP). 2012. *Sustainable procurement practice*. NIGP Principles and Practices of Public Procurement: Developing Evaluation Criteria. Hemdon (VA): NIGP.
- Christensen, T and Lægreid, P. 2013. *The Ashgate research companion to new public management*. Burlington (VT): Ashgate Publishing/Taylor & Francis Group.

- CIPS (Chartered Institute of Purchasing & Supply Australia). 2007. *Contract management guide*. Melbourne (AU): CIPS Australia.
- CIPS (Chartered Institute of Purchasing & Supply Australia). 2012. *Six building blocks to bolster procurement capability*. Melbourne (AU): CIPS Australia.
- CIPS (Chartered Institute of Purchasing & Supply Australia). 2013. *The definitions of 'procurement' and 'supply chain management'*. Melbourne: Melbourne (AU): CIPS Australia.
- CIPS (Chartered Institute of Purchasing & Supply Australia). 2014. CIPS corporate ethics. V.1.1. Melbourne (AU): CIPS Australia.
- Cleland, J. 2017. *Statement of business ethics*. Port Macquarie (AU): Essential Energy.
- Coenen, T.L. 2008. *Essentials of corporate fraud*. Upper Saddle River (NJ): John Wiley & Sons, Inc.
- Crandall, R.E, Crandall, W.R and Chen, C.C. 2010. *Principles of supply chain management*. New York (NY): CRC Press/Taylor & Francis Group.
- Creswell, J.W. 2013. *Qualitative inquiry and research design. Choosing among five approaches*. 3rd ed. Los Angeles: SAGE.
- Creswell, J.W. 2014. *Research design: Qualitative, quantitative and mixed methods approaches*. 4th ed. Los Angeles: SAGE.
- Davey, J. and Gatenby, A. (eds). 2016. *The government procurement review*. 4th ed. London (UK): Law Business Research. Printed by Encompass Printing Solutions (UK): Ilkeston, Derbyshire.
- Deloitte. 2013. *Developing an effective governance operating model: A guide for financial services boards and management teams*. Washington, DC: Deloitte Development LLC.
- Denhardt, R.B and Denhardt, J.V. 2009. *Public administration: An action orientation*. 6th ed. Boston (MA): Wadsworth Cengage Learning.

- Denhardt., R.B, Denhardt, J.V and Blanc, T.A. 2014. *Public administration: An action orientation*. 7th ed. Boston (MA): Wadsworth Cengage Learning.
- Dlamini, W. and Ambe, I.M. 2012. The influence of public procurement policies on the implementation of procurement best practices in South African universities. *Journal of Transport and Supply Chain Management*, 6(1):277–293.
- Dobie, K. and Xinwa, N. 2015. *Understanding the municipal procurement process: A guide for businesses*. Pretoria (ZA): Ethics Institute of South Africa.
- Doody, H. 2010 (ed). *A short guide to fraud risk: Fraud resistance and detection*. Farnham (UK): Gower Publishing Limited.
- Dragoș, C.T. 2015. Aspects regarding the internal control on the level of public entities in Romania. The internal control models in Romania. Annals of the Constantin Brâncuși” University of Târgu JIU, Economy Series. Special issue/2015. Information Society and Sustainable Development. Faculty of Economic Studies, Petroleum-gas University, Ploiesti, Romania.
- Durant, R. F and Durant, J. R. S. (2013). *Debating public administration: management challenges, choices and opportunities*. Boca Raton: CRC Press.
- Du Toit, D.F.P and Van der Waldt, V.D.G. 1999. *Public administration and management: The grassroots*. Kenwyn (ZA): Juta & Company Limited.
- Dzuke, A. and Naude, M.J.A. 2015. Procurement challenges in the Zimbabwean public sector: A preliminary study. *Journal of Transport and Supply Chain Management*, 9(1):1–9.
- Edler., J, Rigby, J, Hommen, L and Tspouri, L. 2015. *Innovation and public procurement. Review of issues at stake*. Karlsruhe (DE): Fraunhofer-Institute of Systems and Research.
- El-Ayouty, Y., Ford, K.J. and Davies, M. 2000. *Government ethics and law enforcement: Towards global guidelines*. Westport (CT): Praeger Publishers.
- Ericsson, D. 2011. Demand chain management – The evolution. *ORiON: The Journal of ORSSA*, 27(1):45–81. School of Engineering, University of Borås. Borås

- Sweden. Available from: <http://www.orssa.org.za>. (Accessed 10 September 2017).
- EU. 2011/12. *Public procurement working group*. EU in Business in China Position Paper. Brussels (BE): European Commission.
- European Bank for Reconstruction and Development (EBRD). 2010. *Regional assessment of public procurement legal framework*. Astana (KZ): EBRD.
- European Commission (EC). 2016. Stock-taking of administrative capacity, systems and practices across the EU to ensure the compliance and quality of public procurement involving European Structural and Investment (ESI) Funds. Final Report Country Profiles. European Commission Directorate-General for Regional and Urban Policy Directorate. Brussels (BE): European Commission.
- European Organisation of Supreme Audit Institutions (EUROSAI). 2013. Task Force on Audit & Ethics (TFA&E). *Auditing ethics in the public sector: A general overview of SAI's practices*. Madrid (ES): EUROSAI.
- Firozi, M.I. 2013. Effectiveness of the centre-led action network (CLAN) purchasing approach: A case study on O&M materials purchasing by Gazipur PBS. Dissertation for the fulfilment of Masters in Procurement and Supply Management, IGS. Unpublished. Dhaka (BD): Institute of Governance Studies (IGS).
- Flynn, A and Davis, P. 2014. Theory in public procurement research. *Journal of Public Procurement*, 14(21):139–180, January.
- Fourie, D.J. 2009. Ethical conduct as the cornerstone of public procurement of public sector procurement. *Journal of Public Administration*, 44(3.1):626–637.
- 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. Available from: <https://www.researchgate.net/publication/263124992>. (Accessed 3 October 2017).
- Fox, W., Schwella, E. and Wissink, H. 2004. *Public management*. Stellenbosch (ZA): Sun Press.

- Fuguo, C., Wang P. and Liaohai, G. 2011. *Public procurement in China: European business experiences competing for public contracts in China*. Beijing (CN): The European Union Chamber of Commerce in China.
- Gabriel, M and Töpfer, F.R. 2009. *Remedies and public procurement laws in Europe*. 3rd ed. Berlin (DE): Baker & McKenzie.
- GAN Integrity Solutions Inc. (GIS). 2015. *China corruption report*. Available from: <http://www.business-anti-corruption.com/country-profiles/china>. (Accessed 20 October 2017).
- Garcia, R.H. 2009. *International public procurement: A guide to best practice*. London (UK): Globe Law and Business.
- Global Legal Group (GLG). 2016. *The international comparative legal guide to: Public Procurement 2016*. 8th ed. A practical cross-border insight into public procurement. London: GLG.
- Government Communication & Information System (GCIS) Communication Centre. 2016. Statement issued by Africa Boso, Auditor-General South Africa, 16 November. *The Witness*, 17 November.
- Ghansah, E.E.W, 2016. Enhancing public procurement practices in Ghana. *Dama International Journal of Researchers (DIJR)*, 1(5):8–11.
- Gildenhuys, J.S.H. 1997. *Public financial management*. Cape Town (ZA): JL van Schaik Publishers.
- Gilman, S.C. 2005. *Ethics codes and codes of conduct as tools for promoting an ethical and professional public service: Comparative successes and lessons*. Washington, DC: World Bank.
- Government Accountability Office. 2006. *Procurement internal controls are weak. United States government accountability office report to congressional committees*. April. Washington, DC: United Nations (UN).
- Graells, A.S. 2016. *Public procurement and competition: Some challenges arising from recent developments in EU public procurement law*. Oxford (UK): Hart.

- Gruening, G. 2001. Origin and theoretical basis of new public management. *International Public Management Journal*, 4(1):1–25.
- Guest, G., MacQueen, K. and Namey, E. 2012. *Applied thematic analysis*. Thousand Oaks (CA): Sage Publishers.
- Guile, P. 2013. 10 ways to control procurement fraud. *Supply Management*, 17 December. CIPS. Available from: <https://www.cips.org/supply-management/opinion/2013/december/10-ways-to-control-procurement-fraud/>. (Accessed 20 October 2017).
- Haque, M.S. 2001. Privatisation in developing countries: Formal causes, critical reasons and adverse impact. In A. Farazmand (ed.). 2001. *Privatization or public enterprise reform? International case studies with implications for public management*. Westport (CT): Greenwood Press.
- Henry, N. 2013. *Public administration and public affairs*. 12th ed. Boston (MA): Pearson.
- Hill, S. 2010. *Corporate fraud: prevention and detection*. 2nd ed. Haywards Heath (UK): Bloomsbury Professional.
- Holzer, M and Schwester, R.W. 2011. *Public administration: An introduction*. New York (NY): M.E. Sharpe.
- Horn, G.S. and Raga, K. 2012. Municipal supply chain management challenges and solutions: An empirical study. *Administratio Publica*, 20(3):71–91.
- Hough, J, Neuland, E.W and Bothma, N. 2004. *Global business environments and strategies: Managing for global competitive advantage*. 2nd ed. Cape Town (ZA): Oxford University Press.
- Hughes, O.E. 2012. *Public management and administration: An introduction*. 4th ed. New York (NY): Palgrave Macmillan.
- Ijeoma, E. 2013. *South Africa's public administration in context*. 1st ed. Pretoria (ZA): Verity Publishers.

- Institute of Directors in Southern Africa (IoDSA). 2016. *King IV. Report on corporate governance for South Africa 2016*. Sandton (ZA): Institute of Directors in Southern Africa (IoDSA).
- Institute of Internal Auditors/Global (IIA). 2011. *Supplemental guidance: Public sector definition*. Altemonte Springs (FL): Global headquarters of Institute of Internal Auditors/Global (IIA). Available from: <http://www.globaliia.org/standards-guidance>. (Accessed 20 October 2017).
- International Training Centre of the International Labour Organization (ITC-ILO). 2012. *Procurement management in the public sector (goods, works, services)*. Turin (IT): ITC-ILO.
- Institute of Risk Management South Africa (IRMSA). 2015. *IRMSA risk report: South African risks 2015*. 1st ed. Sandton (ZA): IRMSA.
- International Technology Law Association (ITECHLAW). 2012. In-house counsel committee's international public procurement guide for in-house counsel. Available from: [www.harlaylaw.com/2012..In House Counsel Public Procurement Guide FINAL](http://www.harlaylaw.com/2012..In-House-Counsel-Public-Procurement-Guide-FINAL). (Accessed on: 30 September 2016).
- Jeppesen, R. 2010. *Accountability in public procurement: Transparency and the role of civil society*. New York (NY): United Nations Procurement Capacity Development Centre (UNPCDC). September. Available from: <http://www.unpcdc.org>. (Accessed 2 April 2012).
- Junior, S.F.W. 2015. Nurturing domestic firms through public procurement: A comparison between Brazil and Japan. *Public Policy and Administration*, 31(1):29–50. Ministry of Planning, Budget and Management, Brasilia-DF, Brazil.
- Kabega, C., Kule, J.W and Mbera, Z.R. 2016. Effect of procurement practices on performing of public projects in Rwanda: A case study of Bugesera district office construction project. *International Journal of Economics, Commerce and Management*, IV (5):377–397.

- Kaijalainen, T and Luoma, R, 2014. Getting the deal through. In H-J. Prieß (ed). 2014. *Public procurement in 33 jurisdictions worldwide*. London (UK): Law Business Research Ltd.
- Kalubanga, M., Kakwezi, P., and Kayiise, D. 2013. The effects of fraudulent procurement practices on public procurement performance. *International Journal of Business and Behavioral Sciences*, 3(1):23–24, January.
- Kamau, P.M. and Rotich, G. 2015. Effects of internal control systems on procurement procedures in constituency development projects: A case of Nyandarua country, Kenya. *International Journal of Economics, Commerce and Management*, III (6), June.
- Kanyane, M.H. 21 Narratives of ethical dilemmas and their therapeutic resolutions. In the 21st Century. Ethics architecture Handbook. Wandsbeck: Reach Publishers.
- Kgomo, B. and Plant, K. 2015. Dimensions for the assessment of ethical leadership: An internal audit perspective. *South African Journal of Accountability and Audit Research*, 17(2):85–94.
- Khumalo, J., Nqojela, P. and Njisane, Y. 2011. *The impact of corruption on governance and socio-economic rights*. Available from: <http://www.casac.org.za/wp-content/uploads/2011/09/IMPACT-OF-CORRUPTION1.pdf>. (Accessed 20 October 2017).
- Kinyanjui, S.N. 2015. *Analysis of fraud from a criminologist perspective*. Nairobi (KE): Catholic University of Eastern Africa.
- Kisembo. H.C. 2012. *Policy formulation and process*. [Slideshow – no other information available.]
- KPMG International/Global Consumer Markets. 2010. *Procurement fraud in consumer companies: Preventing, detecting and taking action*. Amstelveen (NL): KPMG.
- Kramer, W.M. 2012. *The most common procurement fraud schemes and their primary red flags*. Washington, DC: International Anti-Corruption Resource Center (IACRC). March 6, 2012. <http://iacrc.org/>. (Accessed 17 September 2017).

- Krvinsh, A. and Vilks, A. 2013. Prevention of corruption in public procurement: Importance of general legal principles. *Jurisprudence*, 20(1):235–247.
- Kuhn, S and Sherman, L.B. 2014. *Curbing corruption in public procurement: A practical guide*. Berlin (DE): Transparency International: The Global Coalition against Corruption.
- Lambert, D.M. 1994. *Supply chain management*. Global Supply Chain Forum. Jacksonville (FL): International Center for Competitive Excellence. University of North Florida.
- Leedy, P.D and Ormrod, J.E. 2013. *Practical research: Planning and design*. 10th ed. New York: Pearson.
- Lember, V., Kattel, R. and Kalvet, T. (eds). 2014. *Public procurement, innovation and policy: International perspectives*. Berlin (DE): Springer-Verlag.
- Lienert, I. 2009. *Where Does the Public Sector End and the Private Sector Begin?* WP/09/122. IMF Working Paper. International Monetary Fund. citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.544.1711&rep=rep1. (Accessed on 12 July 2016).
- Maharaj, T and Karodia, A.M. 2013. The impacts that supply chain management has on fraudulent activities in the public sector. *Singaporean Journal of Business Economics, and Management Studies*, 2(3):44–55.
- Majila, T., Taylor, J.D. and Raga, K. 2014. A comparative analysis of the implementation of anti-corruption legislation by anti-corruption agencies in the provinces of the Eastern and Northern Cape. *The Journal for Transdisciplinary Research in Southern Africa (TD)*, 10(1):219–240, July.
- Malolitneva, V. 2014. Ukraine's potential accession to the WTO Government Procurement Agreement: What are the pros and cons? *GSTF Journal of Law and Social Sciences (JLSS)*, 4(1):52–60, December.

- Mantzaris, E and Pillay, P. 2013. *Free enterprise and corruption: The South African construction cartel case study*. Anti-Corruption Centre for Education and Research of Stellenbosch University. Bellville (ZA): Stellenbosch University.
- Manyaka, R.K. and Nkuna, N.W. 2014. The phenomenon of corruption in the South African public sector: Challenges and opportunities. *Mediterranean Journal of Social Sciences*, 5(27):1572–1580.
- Martindale, N. 2010. South African government urged to tackle fraud in wake of World Cup. *Supply Management*, 11 July. London (UK): CIPS Centre of Excellence, London Metropolitan University. Available from: <http://www.supplymanagement.com/news/2010/>. (Accessed 3 October 2017).
- Marume, S.B.M. 2016. Generic review of public administration. *Journal of Research in Humanities and Social Science*, 4(6):15–20, 7 June.
- Mawenya, A.S. 2008. *Analysing key policy and governance issues in Africa and beyond: Preventing corruption in African procurement*. SAIIA Occasional paper. Braamfontein/Johannesburg (ZA): South African Institute of International Affairs (SAIIA).
- Mbaku, J.M. 2000. *Bureaucratic and political corruption in Africa: The public choice perspective*. Malabar (FL): Krieger Publishing Company.
- Mbaku, J.M. 2007. *Corruption in Africa: Causes, consequences and cleanups*. Lanham (MD): Lexington Books.
- McCrudden, C. 2004: Using public procurement to achieve social outcomes. *Natural Resources Forum*. 28(4), pages 257-267.
- McNamee, L. 2016. Procurement fraud. *Economic Crime Forensics Capstones*. Paper 12. Economic Crime Forensics Program, La Salle University Digital Commons, Pennsylvania. Available from: http://digitalcommons.lasalle.edu/ecf_capstones/12. (Accessed 20 October 2017).
- Mentzer, J.T, De Witt, W., Keebler, J.S, Min, S., Nix, N.W., Smith, C.D. and Zacharia, Z.G. 2001. Defining supply chain management. *Journal of Business Logistics*, 22(2): 1–25, Autumn.

- Mentzer, J.T, Myers, M.B and Stank, T.P. 2007. *Handbook of global supply chain management*. Thousand Oaks (CA): SAGE Publications.
- Migiro, S.O and Ambe, I.M. 2008. Evaluation of the implementation of public sector supply chain management and challenges: A case study of the central district municipality, North West Province, South Africa. *African Journal of Business Management*, 2(12):230–242.
- Muller, H.P. 2011. *German government procurement regulations & practice*. Symposium on Government Procurement Regulations & Practice. Taipei World Trade Center. Bundesministerium Für Wirtschaft und Technologie.
- Munzhedzi, P.H. 2016. South African public sector procurement and corruption: Inseparable twins? *Journal of Transport and Supply Management*, 10(1):3–14.
- National Institute of Government Purchasing (NIGP). 2012. *Sustainable procurement practice*. NIGP Principles and Practices of Public Procurement: Developing Evaluation Criteria. Hemdon (VA): NIGP (in collaboration with CIPS).
- National Fraud Authority (NFA) (UK). 2011. *Procurement fraud in the public sector*. London (UK): NFA. Available from: <https://www.cips.org/en/news/news/Report-on-public-sector-procurement-fraud/>. (Accessed 3 October 2017).
- Ngoveni, S.A.B. 2011. An analysis of the tender process in national government in South Africa. Mini-dissertation submitted in partial fulfilment of the requirements for the degree Master of Administration at the North-West University. Unpublished.
- Nkwe, L., Singh, S. and Karodia, A.M. 2015. Analysis of the preferential procurement regulations: A case study of the Department of Communications, Pretoria (South Africa). *Arabian Journal of Business and Management Review (Oman Chapter)*, 5(4).
- Noor, M.A, Khalfan, M.M.A and Maqsood, T. 2013. The role of procurement practices in effective implementation of infrastructure projects in Pakistan. *International Journal of Managing Projects in Business*, 6(4):802–806.

- OECD. 2011. *Internal control and internal audit: Ensuring public sector integrity and accountability. A report by OECD Internal Audit and the OECD Public Governance Directorate*. Paris (FR): OECD Publishing.
- OECD. 2012. *OECD governance review. Integrity review of Brazil managing risk for public service*. Brussels (BE): OECD Publishing.
- Opperman, S.K. 2014. Perceptions on fraud and corruption policies and strategies in public procurement within the Western Cape provincial treasury (WCPT). Thesis presented in partial fulfilment of the requirements for the degree Masters in Public Administration in the faculty of Management Science at Stellenbosch University. Unpublished.
- Oyedele, L.K. 2015. Theories of public administration: an anthology of essays. *International Journal of Politics and Good Governance*, Volume number VI, Issue number 6.3
- Palaopa, Y.S. 2013. *Stages of policy making*. 27 January. Available from: <https://www.slideshare.net/yhamskiey/policy-making-proces>. (Accessed 5 June 2016)
- Pan, G., Seow, P.S., Suwardy, T. and Gay, E. 2011. Fraud: A review and research agenda. *Journal of Accountancy Business and the Public Interest*, 10:138–178. Institutional Knowledge, Singapore Management University (SMU), School of Accountancy, Singapore (MY).
- Pauw, J.C. and Wolvaardt, J.S. 2009. Multi-criteria decision analysis in public procurement: A plan from the South. *Politeia*, 28(1):66–88.
- Pedneault, S. 2009. *Fraud 101. Techniques and strategies for understanding fraud*. 3rd ed. Upper Saddle River (NJ): John Wiley & Sons.
- People's Republic of China. 2000. *The tendering and bidding law of 'The People's Republic of China'*. (Adopted at the 11th Session of the Standing Committee of the Ninth National People's Congress on 30 August 1999, promulgated by Decree No 21 of the President of the People's Republic of China on 30 August 1999, and effective 1 January 2000.)

- Peters, B.G. and Pierre, J. 2012. *The Sage handbook of public administration*. 2nd ed. Los Angeles (CA): Sage.
- Pickette, K.H.S. and Pickette, J.M. 2002. *Financial crime investigation and control*. New York (NY). John Wiley & Sons.
- Pillay, S. 2004. Corruption – the challenge to good governance: A South African perspective. *International Journal of Public Sector Management*, 17(7):586–605.
- Pillay, K. 2013. *Corruption news: Understanding tender corruption*. Part One. Johannesburg (ZA): Corruption Watch.
- 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.
- PwC. 2014a. *Global economic crime survey. Confronting the changing face of economic crime*. February.
- PwC. 2014b. *Global economic crime survey. Economic crime: A threat to business globally*. March.
- Quinot, G. 2014. *An institutional legal structure for regulating public procurement in South Africa: Research report on the feasibility of specific legislation for National Treasury's newly established office of the Chief Procurement Officer*. Final Report. March.
- Raadschelders, J.C.N. 2011. *Public Administration: The Interdisciplinary Study of Government*. New York: Oxford University Press.
- Raga, K. 2008. Public sector procurement: South African ethical and legislative aspects. *African Journal of Public Affairs*, 2(1):109–121.
- Raga, K., Bayat, M.S. and Ferreira, N. 2012. Nature and extent of procurement management relationship between the provincial government of the Eastern

- Cape and the building industry. *Arabian Journal of Business Management (Kuwait chapter)*, 1(7):81–100.
- Republic of Cyprus. 2007. *Public procurement best practice guide*. Treasury of the Republic of Cyprus. Public Procurement Directorate. Version: 1.1 (01/01/2008) 2007. Available from: [http:// www.publicprocurementguides.treasury.gov.cy](http://www.publicprocurementguides.treasury.gov.cy). (Accessed 20 July 2016).
- Robinson, M. 1998. *Corruption and development*. London (UK): Frank Cass.
- Rodríguez, R. J. 2014. *Collaborative production and management of water information. How to make polycentric information available to managers, agencies and the public: Spanish experience*. Paper presented at the International Conference on Data, Information and Knowledge for Water Governance in the Networked Society. Seville, Spain, 9–11 June. Available from: <http://grupo.us.es/giest/es/node/906>. (Accessed 25 May 2015).
- Rose, A. & Lawton, A. 1999. *Public service management*. New York (NY): Financial Times/Prentice Hall.
- Rose-Ackerman, S. 1999. *Corruption and government: Causes, consequences, and reform*. New York (NY): Cambridge University Press.
- Rose-Ackerman, S. and Søreide, T. 2011. *International handbook on the economics of corruption*. Vol. Two. Cheltenham (UK): Edward Elgar.
- Rutgers, M.R. 2010. *Foundations of public administration: Theory and scope*. *Public Administration Review*, 1–45.
- Salkind, N.J. 2010. *Encyclopedia of research design*. Vol. 3. Los Angeles (CA): Sage.
- Samuelson, P.A and Nordhaus, W.D. 1985. *Economics*. 12th ed. New York (NY): McGraw-Hill.
- Sarter, E.K., Fuchs, S and Sack, D. 2014. SME-friendly public procurement in Germany? Legal strategies and political challenges. Working Paper Series “Comparative Governance”, 2, September. Bielefeld (DE): Universität Bielefeld.

Available from: http://www.unibielefeld.de/soz/powi/pdf/WPCG02_Sarter_Fuchs_Sack_SME_PubProcurement_Sept14.pdf. (Accessed 18 October 2017).

- Schapper, P. 2008. The impact of e-procurement on corruption: The potential of e-procurement for curbing corruption risks. In: ADB/OECD. 2008. *Fighting bribery in public procurement in Asia and the Pacific*. Proceedings of the 7th Regional Seminar on Making International Anti-Corruption Standards Operational, Indonesia 2007.
- Schiavo-Campo, S and McFerson, H.M. 2008. *Public management in global perspective*. New York. M.E. Sharpe, Incl.
- Schumpeter, E.B. (ed). 1954. *History of economic analysis*. London (UK): George Allen and Unwin Ltd.
- Shafritz, J.M. (ed). 2000. *Defining public administration. Selection from the international encyclopedia of public policy and administration*. Boulder (CO): Westview Press.
- Singleton, T.W. and Singleton, A.J. 2010. *Fraud auditing and forensic accounting*. 4th ed. Hoboken (NJ): John Wiley & Sons.
- Smith. G, Button, M. Johnston. L, Frimpong, K. 2011. *Studying fraud as white-collar crime*. Basingstoke (UK): Palgrave MacMillan.
- Smith, P. 2015. *Procurement and supply chain fraud: How it happens and how e-commerce can improve controls*. Houston (TX): OFS Portal, LLC.
- Snider, K.F and Rendon, R.G. 2010. Public procurement: Public administration and public service perspectives. *Journal of Public Affairs Education*, 18(2):327–348.
- Sobel, R.S., Gwartney, J.D Stroup, R.L and Macpherson, D.A. 2011. *Understanding macroeconomics*. Melbourne (AU): South-Western/Cengage Learning.
- South Africa, Republic (RSA). 1968. *State Tender Board Act, 1968 (Act 86 of 1968)*. Pretoria (ZA): Government Printer.
- South Africa, Republic (RSA). 1973. *Companies Act, 1973 (Act 61 of 1973)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 1994. *Public Protector Act, 1994 (Act 23 of 1994)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 1995. *South African Qualifications Authority Act, 1995 (Act 58 of 1995)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 1996. *Constitution of the Republic of South Africa, 1996*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 1997a. *Green paper on public service training and education*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 1997b. *National Building Regulations and Building Standards Act, 1997 (Act 103 of 1997)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 1998a. *Competition Act, 1998 (Act 89 of 1998) (CA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 1998b. *Prevention of Organised Crime Act, 1998 (Act 121 of 1998) (POCA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 1998c. *Skills Development Act, 1998 (Act 97 of 1998)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 1999a. *Competition Amendment Act, 1999 (Act 35 of 1999)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 1999b. *Public Finance Management Act, 1999 (Act 1 of 1999) (PFMA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 1999c. *SMS handbook. Performance management and development (Chapter 4)*. Pretoria (ZA): DPSA.

South Africa, Republic (RSA). 2000a. *Construction Industry Development Board Act, 2000 (Act 38 of 2000) (CIDBA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2000b. *Local Government: Municipal Systems Act (Act 32 of 2000)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2000c. *Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) (PPPFA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2000d. *Promotion of Access to Information Act, 2000 (Act 2 of 2000) (PAIA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2000e. *Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) (PAJA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2000f. *Protected Disclosures Act, 2000 (Act 26 of 2000) (PDA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2002. *Intelligence Service Act, 2002 (Act 65 of 2002)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2003a. *Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003) (B-BBEEA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2003b. *Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2003c. *Local Government: Municipal Financial Management Regulations*. Government Printer: Pretoria.

South Africa, Republic (RSA). 2003d. *Policy strategy to guide uniformity in procurement reform processes in government*. Pretoria (ZA): National Treasury.

South Africa, Republic (RSA). 2003e. *Regulations in terms of the Public Finance Management Act, 1999: Framework for supply chain management*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2004a. *Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) (PCCAA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2004b. *Public Audit Act, 2004 (Act 25 of 2004) (PAA)*. Pretoria (ZA): Government Printer.

South Africa, Republic (RSA). 2004c. *Supply chain management: A guide for accounting officers/authorities*. Pretoria (ZA): National Treasury.

- South Africa, Republic (RSA). 2007a. *Employee performance management and development system (EPMDS)*. Developed by the Department of Public Service and Administration as a Framework for Voluntary Use by Departments. Pretoria (ZA): DPSA.
- South Africa, Republic (RSA). 2007b. Public Service Commission Report. Branch: Monitoring and Evaluation. *Report on the implementation of fraud prevention plans in the public service*. November. Pretoria (ZA): DPSA.
- South Africa, Republic (RSA). 2008. *Companies Act, 2008 (Act 71 of 2008)*. Pretoria (ZA): Government Printer.
- South Africa, Republic (RSA). 2009a. *Evaluation of supply chain management practices within the R200 000 threshold*. Pretoria (ZA): Public Service Commission.
- South Africa, Republic (RSA). 2009b. *Improving government performance: Our approach*. Pretoria (ZA): Presidency.
- South Africa, Republic (RSA). 2009c. *Green paper: National strategic planning*. Pretoria (ZA): Presidency.
- South Africa, Republic (RSA). 2010a. *Framework for strategic plans and annual performance plans*. Pretoria (ZA): National Treasury.
- South Africa, Republic (RSA). 2010b. South African Finance Minister Pravin Gordhan's speech at the annual meeting of the World Economic Forum in Davos, Switzerland, 30 January. World Economic Forum. National Treasury: Pretoria.
- South Africa, Republic (RSA). 2010c. *Special Investigation Unit annual report 2009/10*. 31 August. Pretoria (ZA): SIU.
- South Africa, Republic (RSA). 2011a. *Implementation guide: Preferential procurement regulations*. 1 December. Pretoria (ZA): National Treasury.
- South Africa, Republic (RSA). 2011b. *Preferential procurement regulations*. Pretoria (ZA): Government Printer/National Treasury.

- South Africa, Republic (RSA). 2011c. PSC. *Measuring the effectiveness of the national anti-corruption hotline: Third biennial report*. June.
- South Africa, Republic (RSA). 2011d. PSC. *Profiling and analysis of the most common manifestations of corruption and its related risks in the public service*. Pretoria (ZA): PSC.
- South Africa, Republic (RSA). 2011e. *Special Investigation Unit annual report 2010/11*. 31 August. Pretoria (ZA): SIU.
- South Africa, Republic (RSA). 2011f. Public Sector Integrity Management Framework. Pretoria (ZA): DPSA.
- South Africa, Republic (RSA). 2012a. Auditor-General South Africa (AGSA). *2011–12 Consolidated general report on the national, provincial and public entities audit outcomes 2011–12*. Pretoria (ZA): Government Printer.
- South Africa, Republic (RSA). PSC. 2012b. Factsheet on finalised cases of financial misconduct for the 2011/2012 financial year. Pretoria (ZA): PSC.
- South Africa, Republic (RSA). 2012c. Western Cape Provincial Treasury Instructions: *Chapter 16A-Supply Chain Management: Goods and service*. Cape Town, ZA: Western Cape Provincial Treasury.
- South Africa, Republic (RSA). 2013a. Auditor-General South Africa (AGSA). *2012–13 Consolidated general report on the national, provincial and public entities audit outcomes 2012–13*. Pretoria (ZA): Government Printer.
- South Africa, Republic (RSA). 2013b. *Our future – make it work: National development plan 2030*. National Planning Commission (NPC). Pretoria (ZA): Government Printer.
- South Africa, Republic (RSA). 2013c. *Report of the Public Protector in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 and section 8(1) of the Public Protector Act, 1994*. Pretoria (ZA): Government Printer.
- South Africa, Republic (RSA). 2013d. *Special Investigation Unit annual report 2012/13*. 31 August. Pretoria (ZA): SIU.

- South Africa, Republic (RSA). PSC. 2013e. Factsheet on finalised cases of financial misconduct for the 2012/2013 financial year. Pretoria (ZA): PSC.
- South Africa, Republic (RSA). 2014a. Auditor-General South Africa (AGSA). *2012–13: Consolidated general report on the national, provincial and public entities audit outcomes 2012–13*. Pretoria (ZA): Government Printer.
- South Africa, Republic (RSA). 2014b. Department of Cooperative Governance and Traditional Affairs. *Fraud prevention manual: Act against corruption today*. Pretoria: CoGTA.
- South Africa, Republic (RSA). 2014c. *Guide to government clusters. Social protection, community and human development*. Pretoria (ZA): Presidency.
- South Africa, Republic (RSA). 2014d. *Performance management and development policy*. Pretoria (ZA): CoGTA.
- South Africa, Republic (RSA). 2014e. *Public Administration Management Act, 2014 (Act 11 of 2014)*. Pretoria (ZA): Government Printer.
- South Africa, Republic (RSA). 2014f. *South Africa yearbook 2013/14*. Pretoria (ZA): Department of Social Development.
- South Africa, Republic (RSA). 2014g. *Special Investigation Unit annual report 2013/14*. 31 August. Pretoria (ZA): SIU.
- South Africa, Republic (RSA). 2014h. *Supply chain management policy: 2014/15 financial year*. Pretoria (ZA): Department of Traditional Affairs.
- South Africa, Republic (RSA). 2014i. *MTEF technical guidelines for the preparation of expenditure estimates for the 2015 medium term expenditure framework (MTEF)*. Pretoria (ZA): National Treasury.
- South Africa, Republic (RSA). 2015a. Auditor-General South Africa (AGSA). *2014–15 Consolidated general report on the national, provincial and public entities audit outcomes 2014–15*. Pretoria (ZA): Government Printer.

- South Africa, Republic (RSA). 2015b. Construction Industry Development Board (CIDB). *Standard for uniformity in construction procurement*. Pretoria (ZA): Government Printer.
- South Africa, Republic (RSA). 2015c. *Special Investigation Unit annual report 2014/15*. 31 August. Pretoria (ZA): SIU.
- South Africa, Republic (RSA). 2015d. *2015 Public sector supply chain management review*. Pretoria (ZA): National Treasury.
- South Africa, Republic (RSA). 2015e. *2015 Budget speech*. Made by Nhlanhla Nene, Minister of Finance, 25 February 2015. Pretoria (ZA): National Treasury.
- South Africa, Republic (RSA). 2015f. *Estimates of national expenditure 2015*. (Abridged version.) Pretoria (ZA): National Treasury.
- South Africa, Republic (RSA). 2015g. PSC. Factsheet on financial misconduct and the recovery of money lost through financial misconduct for the 2013/2014 financial year. Pretoria (ZA): PSC.
- South Africa, Republic (RSA). 2016a. *Annual report for the financial year 2015/16*. Pretoria (ZA): DCoG.
- South Africa, Republic (RSA). 2016b. Auditor-General South Africa (AGSA). *2015–16 Consolidated general report on the national, provincial and public entities audit outcomes 2015–16*. Pretoria (ZA): Government Printer.
- South Africa, Republic (RSA). 2016c. *SCM review update 2016*. Pretoria (ZA): National Treasury.
- South Africa, Republic (RSA). 2017a. *Capital planning guidelines*. Pretoria (ZA): National Treasury.
- South Africa, Republic (RSA). 2017b. *Preferential procurement regulations*. Pretoria (ZA): Government Printer.
- Stamler, R.T, Marschdorf, H.J and Possamai, M. 2014. *Fraud prevention and detection: Warning signs and the red flag system*. Bosa Roca (USA): CRC Press/Francis & Taylor.

- Standards South Africa. 2015. *South African National Accreditation System: SANS 10845-1. Construction procurement Part 1: Process, methods and procedures*. Pretoria (ZA): CIDB/SABS.
- Stuart, E and Nielsen, S.B. 2015. *Harmonisation of public procurement system in Ukraine with EU standards: Compendium of EU public procurement directives*. A Project funded by the European Union and implemented by a Consortium led by Crown Agents Ltd.
- Sugudhav-Sewpersadh, P. 2015. *Corruption and the law: An evaluation of the legislative framework for combating public procurement corruption in South Africa*. Unpublished doctoral thesis, UKZN.
- Tanzi, V. 1998. *Corruption around the world: Causes, consequences, scope and cures*. Working paper of the International Monetary Fund. WP/98/63.
- Taylor, J.D. and Raga, K. 2010. *Preferential procurement: A case study of South Africa*. Working Paper 13-6. Available from: <http://www.ippa.org/IPPC4/Proceedings/13ProcurementPreferences/Paper13-6.pdf>. (Accessed 20 October 2017).
- Teixeira, D.P.R. 2016. *The differential public procurement regime ('RDC') for the 2014 Brazil FIFA World Cup and the 2016 Rio Olympics*. Available from: <http://www.ippa.org/IPPC5/Proceedings/Part3/PAPER3-6.pdf>. (Accessed 3 October 2017).
- Thai, K.V. (ed). 2009. *International handbook of public procurement*. Public Administration and Public Policy Series (Book 146). Boca Raton (FL): CRC Press.
- Thai, K.V. (ed). 2016. *Global public procurement. Theories and practices*. Boca Raton (FL): Springer.
- Thornhill, C. 2012. *JJN Cloete's South African public administration and management*. 10th ed. Pretoria (ZA): Van Schaik Publishers.
- Thornhill, C. and Van Dijk, H. G. 2010. Public administration theory: Justification for conceptualisation. *Journal of Public Administration*, 45(1.1):95–110.

- Thornhill, C., Van Dijk, G. and Ile, I. (eds). 2015. *Public administration and management in South Africa: A developmental perspective*. Cape Town (ZA): Oxford University Press.
- Transparency International (TI). 2015. *Corruption perceptions index 2015*. Berlin (DE): Transparency International.
- Transparency International (TI). 2016. *Corruption perceptions index 2016*. Berlin (DE): Transparency International.
- Trevino, L.K. and Brown, M. E. 2006. Managing to be ethical: Debunking five business ethics myths. *Strategic Human Resource Management: Theory and Practice*, 18(2):69–81.
- Tucker, C. 2013. *Public procurement in South Africa: Overview*. Bowman Gilfillan. Available from: <http://www.bowman.co.za/FileBrowser/ArticleDocuments/Public-Procurement-in-South-Africa.pdf>. (Accessed 3 October 2017). Also available from: <http://uk.practicallaw.com/2-520-8348>. (Accessed 01 March 2013).
- Tukamuhabwa, B.R. 2012. Antecedents and consequences on public procurement non-compliance behaviour. *Journal of Economics and Behavioral Studies*, 4(1):34–46.
- Turley, L. and Perera, O. 2014. *Implementing sustainable public procurement in South Africa: Where to start. IISD Report*. Pretoria (ZA): IISD.
- 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.
- UNCTAD. 2012. *Competition policy and public procurement*. Intergovernmental Group of Experts on Competition Law and Policy. Palais des Nations, Geneva, 9–11 July. Roundtable Conference on “Competition Policy and Public Procurement”. Written contribution by China. Geneva (CH): UNCTAD.
- United Nations Development Programme (UNDP). 2003. *Public administration reform practice note*. New York: UNDP.

- United Nations Development Programme (UNDP). 2006. *Contract, asset and procurement management user guide*. New York: UNDP.
- United Nations Development Programme (UNDP). 2011. *UN Supplier Code of Conduct Revision.04*. New York: UNDP.
- UNODC (United Nations Office on Drugs and Crime). 2013. *Transparency, objectivity and competition in public procurement. Legal assessment of Mexico's compliance with Article 9 of the United Nations Convention Against Corruption (UNCAC) in the Federal Government, the Federal District and the Federal State of Puebla*. Within the framework of "Public Private Partnership for probity in Public Procurement" Project. 1st ed. Mexico City (MX): UNODC.
- UNOPS. 2011. *Transparency and public procurement. Supplement to the 2011 annual statistical report on United Nations procurement*. UNOPS and United Nations Global Marketplace (UNGM). New York: UNOPS.
- Uromi, S.M. 2014. Challenges facing public procurement information in some African countries, namely South Africa, Uganda, Zimbabwe and Tanzania. *International Journal for Innovation Education and Research*, 2(7):54–60.
- USAID. 2013. *National procurement strategy 2013–2016*. Islamabad (PK): Public Procurement Regulatory Authority, Government of Pakistan.
- Van Der Waladt, G. and Du Toit, D.F.P. 1999. *Managing for excellence in the public sector*. 2nd ed. Kenwyn (ZA): Juta & Co. Ltd.
- Van Weele, A. J. 2005. *Purchasing and supply chain management: Analysis, strategy, planning and practice*. 4th ed. London: Thomson.
- Van Weele, A.J. 2010. *Purchasing and supply chain management: Analysis, strategy, planning and practice*. 5th ed. Hampshire: CENGAGE Learning.
- Vona, L.W. 2011. *The fraud audit: Responding to the risk of fraud in core business systems*. New York (NY): John Wiley & Sons.
- Voskanyan, F. 2000. A study of the effects of corruption on economic and political development of Armenia. Masters essay submitted to the Faculty of the Graduate

- School of Political Science and International Affairs for partial fulfilment of the degree of Master of Arts. Unpublished.
- Wang, P. 2011. *Technical assistance consultant's report. Development of electronic government procurement in the People's Republic of China*. (Financed by R-CDTA 7437 for Asian Development Bank.)
- Wang, P and Zhang, X. 2010. *Chinese public procurement law: An introductory textbook*. Nottingham (UK): EU–Asia Inter-University Network for Teaching and Research in Public Procurement Regulation.
- Webb, W. 2007. *Public management reform and the management of ethics: Incompatible ideals for the developing state?* Madrid (ES): EGPA.
- Westmarland, L. 2011. *Researching crime and justice. Tales from the field*. London (UK): Routledge-Taylor and Francis Group.
- Wessels, J.S. and Pauw, J.C. 1999. *Reflective public administration: Views from the south*. Cape Town (ZA): Oxford University Press.
- Wilson, Woodrow. 1887, June. The study of administration. *Political Science Quarterly 2: Public administration*. Encyclopaedia Britannica Online. Available from: <https://www.britannica.com/>. (Accessed 21 August 2010).
- Woods, G.G. 2008. *Financial management and cost accounting*. Cape Town (ZA): University of Stellenbosch.
- World Bank. 2010. *Latin America and the Caribbean Region Assessment of the procurement systems of the Brazilian Federal Government and the Brazilian State of São Paulo. In support of a use of country systems pilot project in procurement in São Paulo State*. Washington, DC: World Bank Group.
- World Trade Organisation (WTO). 2011a. *Government procurement agreement*. Geneva (CH): WTO Publications.
- World Trade Organisation (WTO). 2011b. *UNCITRAL: Model law on public procurement* World Trade Organisation (WTO).
- World Bank. 2012. *Why Reform Public Procurement?* Washington DC: World Bank.

- World Bank. 2016. *Benchmarking public procurement 2016: Assessing public procurement systems in 77 countries*. Washington, DC: World Bank Group.
- World Trade Organisation (WTO). 2015. *Understanding the WTO*. 5th ed. Geneva (CH): WTO Publications.
- Wulff, C. 2010. *Statement of business ethics-procurement. Version 1.0*. Ipswich City Council, City of Ipswich.
- Xijin, J and Ming, S. 2009. ADB Technical Assistance TA 4790-PRC: Facility for Reform Support and Capacity Building. Final Report on Government Procurement of Public Services People's Republic of China. Beijing: Asian Development Bank.
- Yin, R.K. 2012. *Application of case study research*. 3rd ed. Los Angeles (CA): Wiley & Sons Limited.