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PROCUREMENT CHALLENGES IN THE SOUTH AFRICAN NATIONAL DEFENCE FORCE: KEY OVERSIGHT FOCUS AREAS

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1. INTRODUCTION

Procurement by the Department of Defence (DOD) forms part of the broader state procurement structures. Annually, the State spends billions on Goods, Services and Construction through over 1 000 procurement entities. There are increasing efforts by Government, through its Chief Procurement Officer, to ensure that the procurement process delivers value for money while also limiting opportunities for irregular expenditure as well as fraud and corruption. There is thus a strive towards finding a balance between cost-efficiency and transparency.

While procurement processes have an important role to play in ensuring value for money, these processes have often been described as inefficient and cumbersome in the DOD. Members of the South African National Defence Force (SANDF), responsible for procurement at unit-level, highlight the length of the procurement process and constant delays as some of its primary concerns affecting the day-to-day functioning of the organisation. It further remains unclear whether the DOD Procurement Policy has been finalised and implemented.

This paper highlights the guiding documents for the DOD's procurement policies and key focus areas for oversight related to procurement. The paper is prepared for the PCDMV meeting of 2 June 2021.



2. WHAT GUIDES PROCUREMENT IN THE DEPARTMENT OF DEFENCE?

Procurement within the structures of the DOD is not simply to be guided by internal policies and decisions, but ought to be aligned with broader government policies. As such, the strategic procurement framework should be kept in mind when discussing Departmental procurement.

2.1 The National Development Plan (NDP)

The procurement processes in the public sector can be viewed as a means of fostering economic growth and allowing for a more equitable distribution of wealth. Three key pillars of the NDP can be realised, in part, through effective procurement processes, including reducing corruption, building a capable State and investment in public infrastructure. The NDP recommends several areas where targeted action is particularly important, key amongst which is for state institutions to develop technical and specialist professional skills in order to strengthen the State's ability to fulfil its core functions. This is especially applicable to procurement in order to "improve the ability of procurement systems to deliver value for money and minimise the scope for corruption by differentiating between different forms of procurement, approaching trade-offs more strategically, building relationships of trust and understanding, building enabling support structures and ensuring effective oversight."¹

2.2 The Legislative Framework²

Section 217 of the Constitution of the Republic of South Africa specifies the primary and broad secondary procurement objectives. As the primary objective, section 217(1) states that the procurement system must be fair, equitable, transparent and cost effective. Secondary to that, section 217(2) states that procurement policy may provide for categories of preference in the allocation of contracts and the protection and advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

There are currently more than 80 different legal instruments that govern public sector procurement processes in South Africa, the most prominent which includes:³

- The Constitution;
- Public Finance Management Act (No. 1 of 1999) (PFMA);
- Local Government: Municipal Finance Management Act (No. 56 of 2003) (MFMA);
- Preferential Procurement Policy Framework Act (No. 5 of 2000) (PPPFA);
- State Tender Board Act 86 of 1968 (STBA);
- Broad-based Black Economic Empowerment Act (No. 53 of 2003) (BBBEEA);
- Prevention and Combating of Corrupt Activities Act (No. 12 of 2004) (Corruption Act);
- Construction Industry Development Board Act (No. 38 of 2000) (CIDBA);
- National Land Transport Act (No. 5 of 2009);
- Financial Management of Parliament Act (No. 10 of 2009);
- PFMA Supply Chain Management (SCM) Treasury Regulations;
- MFMA SCM Regulations; and
- Preferential Procurement Regulations.

¹ National Development Plan (2013).

² Van Zyl-Gous. (2016). p. 8.

³ National Treasury (2015). p. 10.



Each organ of state (including the DOD) has to determine its own procedures and policies, within the parameters of these legislative prescripts.

2.3 Guidelines from National Treasury on procurement

National Treasury has in recent years become increasingly aware of challenges around procurement processes, specifically the fragmented approaches to procurement among the various departments and other state entities. Some of the challenges identified include the following:⁴

- Significant overlap and duplication among different regulatory instruments relating to infrastructure, construction, public-private partnerships and procurement policy standards.
- Unclear legal status of the different regulatory instruments for general and specific procurement practices.
- There is significant variation in different legal instruments' scope of coverage with no overarching central procurement authority to provide uniform guidance to clarify such cases.
- There are significant differences in how public sector procurement is carried out in different policy contexts.
- There is a large number of standard bidding documents, many of which require the same information to be provided multiple times resulting in unnecessary duplications.
- The standard preferential procurement regulatory system makes it difficult to achieve Government's developmental and empowerment objectives as it is not flexible enough to adapt to changing empowerment expectations and developmental policy requirements.

Given these challenges, National Treasury has proposed the development of a number of initiatives to procurement in general, including:⁵

- Rationalising the legal environment,
- Bringing about changes to tender documents to make it more user-friendly,
- Streamlining and standardising business processes,
- Fostering cooperation between suppliers and the public sector,
- Increasing transparency in the procurement process, and
- Establishing an office of the Chief Procurement Officer and enhancing the website of this office.

In addition to these initiatives, National Treasury will also focus on strategic sourcing and, specifically, the **centralisation of public procurement**, which could allow Government to reduce costs and increase value. National Treasury indicated that Government will accelerate the centralisation of common goods and services over the next three years.

⁴ National Treasury (2015).

⁵ National Treasury (2015).



3. FREQUENTLY ENCOUNTERED CHALLENGES IN THE PUBLIC PROCUREMENT PROCESS⁶

National Treasury states that some of the most common challenges seen across Government Departments are poor service delivery, shoddy workmanship in construction work, an inefficient lease environment, collusion, cover quoting and fronting. These are some of the ways in which private sector practices contribute to an inefficient public sector SCM environment. Coupled with the current Procurement reforms, the private sector should also be held accountable through rigorous supplier management interventions in order to enable a coherent socio-economic transformation approach by Government.

Many of the challenges found in the SCM environment stem from poor governance practices. Good governance ensures transparency, accountability, efficiency and upholding of the rule of law in all processes. National Treasury states that common governance and compliance failures result in corrupt activities. These include fronting, bribery, nepotism, collusion, cover quoting, conflicts of interest, forgery and tender splitting. These are largely the result of:

- Poor demand and procurement planning, resulting in large deviations and price escalations,
- Poor development of specifications,
- Dysfunctional bid committees,
- Weakly-skilled SCM practitioners, and
- Poor contract and supplier management.

4. PROCUREMENT CHALLENGES IN THE DOD

4.1 Performance against targets

The DOD set itself a number of targets in 2019/20 related to procurement. An overview of these targets reflect challenges in performance. The table below suggests that the DOD Procurement Policy has not been finalised/implemented, as no target has been set (the policy is currently awaiting approval from National Treasury). The main challenge faced by the Department is the payment of invoices within 30 days. This target was missed by a significant margin.

Focus area	Target/desired outcome	Actual achievement
DOD Procurement Policy	No target set.	Last report in 2017/18 noted the Policy still in progress
Percentage procurement requests fully completed within 90 days from day of registration	95%	99.76%
Payments	Payment in 30 days	79.72% of legitimate invoices paid within 30 days

⁶ Van Zyl-Gous. (2016). p. 8.



In addition, the Auditor-General made the following findings on procurement for the 2019/20 Financial Year:

- Some of the goods and services with a transaction value below R500 000 were procured without obtaining the required price quotations, as required by treasury regulation 16A6.1. Similar non-compliance was also reported in the prior year.
- Some of the goods and services of a transaction value above R500 000 were procured without inviting competitive bids and deviations, as required by treasury regulations 16A6.1 and 16A6.4. Similar non-compliance was also reported in the prior year.
- Some of the quotations were awarded to suppliers whose tax matters had not been declared by the South African Revenue Services to be in order, as required by treasury regulation 16A9.1(d). Similar non-compliance was also reported in the prior year.
- Some of the contracts were awarded to bidders based on evaluation or adjudication criteria that differed from those stipulated in the original invitation for bidding and quotations, in contravention of treasury regulations 16A6.3(a) and (b).
- The preference point system was not applied in some of the procurement of goods and services above R30 000, as required by section 2(a) of the Preferential Procurement Policy Framework Act of South Africa, 2000 (Act No. 5 of 2000) (PPPFA) and treasury regulation 16A6.3(b). Similar non-compliance was also reported in the prior year.
- Bid documentation for procurement of commodities designated for local content and production did not stipulate the minimum threshold for local production and content, as required by the 2017 preferential procurement regulation 8(2).
- Some of the prices of emergency goods or services procured through quotations in response to the National State of Disaster declared on 15 March 2020 were above prices negotiated by National Treasury in terms of paragraph 3.7.6(ii) of the National Treasury Instruction Note no. 8 of 2019/20.

Members may note the following:

2016 PCDMV BRR Recommendation: The DOD should finalise its revised Procurement Policy to deal with the decentralisation of this function as a matter of urgency and present the Committee with the update on this matter as soon as the revised policy has been completed. Clear measures to reduce the 90-day procurement target should form part of this policy.

Response from DOD: The Department might not achieve its target on logistics, because it was waiting for National Treasury to conclude its Procurement Policy so that the DOD could align its policy.

Key oversight focus areas regarding procurement in the SANDF

- What is the status of the DOD Procurement Policy? If not yet finalised, what are the reasons for this multi-year delay?
- What are the specific provisions of the DOD Procurement Policy that requires implementation over the medium-term?
- What are the reasons for the DOD's continued lack of payment of suppliers within 30 days?
- **Given that the meeting on 2 June 2021 will also focus on the AGSA's status report, Members may focus specifically on consequence management in relation to the AGSA's procurement-related findings (Section 4.1) in 2019/20.**



4.2 Previous procurement concerns aspects raised by the DOD

In a briefing to the PCDMV in **October 2016**, the DOD noted the following procurement-specific concerns:

- Retention of Procurement Skills.
- Payment of suppliers within 30 days.
- Procurement “*Scam*” whereby suppliers are issued with fraudulent/Bogus Government Orders.
- Corrupting and Corruption within procurement.
- The impact of National Treasury prescripts to the fighting force which results on many deviations.

A presentation forwarded to the PCDMV in **October 2019**, but not presented to the Committee, notes the following DOD procurement challenges:

Internal challenges:

- Training of Staff/Officials.
- Retention of Procurement Skills.
- Payment of suppliers within 30 days.
- Corrupt procurement officials.
- Database inefficiencies (filtering of relevant suppliers). eProcure system provides suppliers that delay the process due to non-delivery, no contact numbers, and unfounded physical address. This causes slow spending by Services and Divisions.
- Lead time for end-user to receive goods and services too long.
- There are a number of efficient units with R100 000,00 and they struggle to procure on the delegation as price increase push quotations to above their delegation especially rations and minor facility repairs.

External challenges:

- Procurement “*Scam*” whereby suppliers are issued with fraudulent/Bogus Government Orders by unknown criminal syndicates.
- Suppliers not delivering according to contracted Government Order.
- The impact of National Treasury prescripts to the fighting force which results on many deviations.
- Distance for delivery increasing costs.
- Suppliers Ceding without informing Procurement Centres.
- Collusion by suppliers for price increase.
- Suppliers fishing for faults for purposes of litigation after awarding of tender (For example, a failed cleaning contractor for 1 Mil Hospital is litigating for a terminated contract).
- Partial deliveries (especially ration suppliers not well resourced). Process for invoicing and payment delays.
- Suppliers poor invoicing



4.3 Practical procurement challenges noted in the SANDF

During oversight visits in the 6th Parliament, the PCDMV has been made aware of several practical procurement challenges that **impact directly on the operational capability of the SANDF**. These include, most prominently:

- **SA Air Force primary equipment:** The procurement of aircraft and other specialised equipment, especially spares for aircraft, take extremely long. This has significant implications for the SA Air Force as the delay in the purchase of one small part can ground a plane for extended periods.

Questions for consideration:

Members may request the Chief of Logistics to explain the process of procuring spare parts for aircraft and how this can be improved?

Is aviation inflation rates considered when planning for the procurement of aircraft parts?

- **Requirements for companies to be utilised.** Once a company has been selected to provide a service following the three-quote system, additional information is then requested from such a company before the procurement is complete. The company is requested to provide, among others, a tax clearance certificate, a BBBEE certificate, a Central database certificate and other required documents. It often takes very long for companies to respond to these requirements. The question has often been raised why these documents cannot be available on the database itself and why it first has to be requested by the SANDF? This process is particularly cumbersome and frustrating for the purchase of small items where a faster turnaround time is necessary.

Questions for consideration:

Why are companies requested to provide the necessary certificates only after they have been selected as the preferred service provider? Why can these documents (tax certificate, BBBEE certificate) not be available on the database and companies be requested to complete these at the start of the procurement processes?

- **Delegation limits for non-self-accounting units:** All units that are not self-accounting has a petty cash spending limit of up to R5000. This frequently results in a lengthy procurement process, even for small items. This amount has also not been adjusted in many years and the relevance of a low limit has become questionable. It makes it cumbersome for units to procure even the most elementary equipment.

Questions for consideration:

Why are units only allowed to make procurements up to R5000 without having to go through the central procurement database? Is this amount still realistic as it result in lengthy procurement processes for small items?

Why were the delegations for spending by units not adjusted upwards over the years? Besides the mentioned issues, how can the procurement processes be further streamlined to assist the OC's to run their units more effectively?



- **Lengthy procurement for operational needs:** During its oversight to the land borders in 2020, the PCDMV was informed that procurement for operational needs are extremely lengthy. Specific reference was made to simple aspects such as the procurement of tyres for vehicles patrolling the border.

Question for consideration:

Has the DOD engaged National Treasury on a possible departure for procurement specifically related to ordered SANDF operations?

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