

CONSTRUCTION PROCUREMENT

[reflections on processes and lessons from the provincial IDMS]

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Locating Construction Procurement within IDMS

The IDMS sets out the service delivery model in each province:

IDMS is driven and supported by:

- **Construction Procurement System**
- **IDM Toolkit** – driven through the IDMP course via the University of Pretoria ('user pay principle')
- **Human Resource Framework for infrastructure units** – implemented as a product of a functional and organizational design process (funded)
- **Knowledge management Framework**

Purpose of this presentation (within the context of the IDMS)

The Purpose is three folded:

1. Addressing and providing solutions to the issues and challenges relating to construction procurement through Treasury Legislation and Regulations and a construction preferential procurement system issued in terms of the PPPFA.
2. This initiative **is to review the impact of current procurement legislation and regulations** on the engineering and construction industries on their ability to provide infrastructure in a sustainable, **value-for-money** manner, without other unintended negative consequences.
3. Focus is on non-construction and construction procurement.
 - Same committee deals with non-construction and construction procurement.
 - Composition of committees is usually such that built environment professionals are seldom involved (or heard) in the evaluation and specification committees where they can add value.
 - Construction requirements / complexities not understood and thus poor decisions are made.



Background

- During 2011 several organisations approached National Treasury expressing their concerns on the regulatory requirements for the procurement of capital / infrastructure projects.
- On 25 January 2012 a workshop was convened by the Office of the Accountant General to discuss the concerns raised.
- An initiative to review the procurement regulations through the formation of a task team consulted with external parties and construction industry representatives;
- Draft Regulations were published in November 2012 for public comment focusing on National Provincial and Public Entities.
- A detailed assessment was done by the Office of the AG of the public comments received during the 2013 financial year.

Background (Cont.)

- Public infrastructure spending and investment in job-creating assets is a strategic priority.
- “Our aim is to strengthen infrastructure investment and maintenance, because this is a key contribution to the underlying growth potential of the economy”.
- The Government will borrow to invest in infrastructure – not for government consumption.
- Procurement may be regarded as the process that creates, manages and fulfils contracts.
 - Adjustments to the procurement regime is required to facilitate the effective implementation of construction procurement system (CPS) not only for National, Provincial and public entities but also for Local Government was pertinent on the feedback received.

Challenges....?

- **Role and responsibilities** between provincial departments and the spheres of government in relation to infrastructure delivery is unclear (AG 2011; NDP 2030)
- The (infrastructure) delivery management system either does not exist or is dysfunctional
- Current structures of and posts in infrastructure units are not aligned to the new management processes and legal requirements.

The OCPO initiative is started to review the impact of current procurement regulations on the civil engineering and construction industries and their ability to provide infrastructure in a sustainable, value-for-money manner, without other unintended negative consequences.

Challenges....? (Cont.)

- In some instances infrastructure for Local Government as in the case of National and Provincial Departments is supported by a service delivery model that is not effective or efficient:
 - Division between budgets and functions between different institutions.
 - Division between responsibilities and accountabilities between different institutions.
 - Inefficiencies - Many meetings to reach consensus, signing of SDAs, differences in priorities/time frames.
 - Role of private sector PSPs in construction procurement.
 - Private and Public Sector competing for same resources base.

Generic Symptoms

- Poor planning and management of contracts
 - Poor input into quality planning, design, specification- Voluminous but very inadequate project brief (poor planning), Inadequate and wrong design, wrong equipment [e.g. Recent Rand Water supply of water due to small water pipelines and not maintaining equipment], frequent and costly modifications (poor planning).
- Inadequate Norms and Standards.
- Frequent and costly changes on the scope of works.
- Poor quality and quantity of project spending-Contribution to late payments.
- Lack or Poor involvement of the management of the facility under revitalisation and to some extent other stake holders.
- Poor oversight, communication, coordination and reporting.
- Poor performance of the roles and responsibilities of the SCM Units versus Infrastructure Units in the project development and management cycle.

Legislative Requirements

- Procurement of goods, services for engineering and construction works for government programmes which involve fixed infrastructure in;
 - (A) compliance with requirements established in terms of the:
 - ❑ Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
 - ❑ Municipal Finance Management Act, 2003 (Act No. 56 of 2003)
 - ❑ Municipal Supply Chain Management Regulations, 30 May 2005 (Notice 868 of 2005);
 - ❑ Construction Industry Development Board (Act No. 38 of 2000); and
 - ❑ Municipal Systems Act, 2000 (Act No. 32 of 2000) as well as the Local Government: Municipal Systems Amendment Act (Act No. 44 of 2003); and
 - ❑ Municipal Structures Act, (Act No. 117 of 1998);
 - ❑ other pertinent Acts for Local Government as described in the MFMA; and
 - ❑ the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000); and

Legislative Requirements (Cont.)

- the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- “Treasury guidelines” which means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act (MFMA); and
- “Treasury guidelines” which means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act (MFMA); and
- (B) a manner which:
 - embraces national and international best practice; and
 - is auditable.

Where do we go....? (Cont.)

- A **Uniform Procurement regulatory framework is needed** [e.g. Treasury Regulations, CIDB best practice notes] which aims to achieve Fairness, Equity, Transparency, Competitiveness and Cost Effectiveness with the focus on construction procurement for ;
 - “Infrastructure Procurement Focuses on Socio and Economic Infrastructure.”
 - IDMS provides the overall system for managing the total life cycle of an immovable asset. It comprises a **set of service delivery processes** which **transform inputs into outputs**. It includes a number of sub systems of which construction procurement is **one sub-system in the broader SCM Function**.
- Currently Infrastructure for Local Government as it was in the case of National and Provincial Departments is supported by a service delivery model that is not effective or efficient.

Construction Procurement : Main Roles

- Construction Procurement Policy Framework Differentiates between SCM Units.
- Construction Procurement Needs to be established
 - Solicit Tender Offers
 - Evaluate Tender Offers and Awarding of Contracts
 - Administer Contracts and Confirm Compliance with requirements – [oversight role]
 - Reporting on SCM Outcomes
- Logistical Support – SCM Units.

Division of Roles

- Built Environment professionals versus SCM Functions
- Built Environment professionals in private sector.
- SCM Units in a Municipal environment [depends on procurement service delivery model for Local Government].
- Legal Services – public and private sector.

Possible Issues to Consider in Legislation

- Minimise decentralised models for areas or contracts that are proved to be problematic e.g. Framework Contracts- consider as transversal procurement.
- Move away from design by employer.
- Standard tender specifications for different type of projects.
- Simplify – move away from too many guides/documents which are based on international standards.
- Prescribe Minimum Norms and Standards for each sector.
- IT systems for construction procurement e.g. One central supplier database for construction procurement, utilisation of contractors, etc.
- The role of Professional Councils / statutory bodies to be clearly defined or capitalised.
- More regulations on non performance by PSPs and who regulates it.
- Prescribed rates for PSPs not determined by Professional Councils but determined by Government.
- How to regulate the construction supply industry – similar like costs for goods and services.

Possible Issues to Consider in Legislation

- Prescribe different service delivery model. Don't split budgets and functions. Don't split responsibility and accountability. Specify outsourced modalities.
- Standardised policy framework applicable to all SCM Units.
- Provide centralised legal services for construction procurement.
- Majority of work is outsourced – provision for HR cannot only be applicable to the Municipalities.
- Prescribe functional structures for SCM units and infrastructure units with professional occupations.
- Prescribe minimum staffing norms.
- Prescribe Standard Minimum qualifications, professional registration and years of experience for officials in SCM and infrastructure — must also be applicable to public entities and Professional Service Providers.

Possible Issues to Consider in Legislation

- Prescribe Standard Job Descriptions for Construction Procurement.
- Standard Operating Procedures for Construction Procurement need to be issued by NT.
- Contracts for PSPs to include clauses on use of municipal staff in projects to enable them to retain their professional points for continued registration.
- Workload for private sector: Maximum number of projects or Rand Value that a PSP can be appointed for in a MTEF. Same for contractors.
- Prescribe audit on qualifications, registration and experience of private sector PSPs when tenders are evaluated.
- Prescribe Audit of officials in terms of qualification, registration and experience.
- Prescribe Skills audits on regular basis based on competence standards issued by National Treasury – Public and Private sector.

Deliverable

- Uniform Supply Chain Management ;
for the Delivery and Maintenance of Infrastructure for Infrastructure Procurement incl. Local Government National and Provincial departments, constitutional institutions and public entities listed in Schedule 3A and 3C to the PFMA
 - Development of a Standard for Infrastructure Delivery Management System.
 - Development of a Standard for Construction Procurement System.

THANK YOU