

Procurement Dynamics and Threats in South African Local Government

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Abstract

There is general consensus among global corruption combating organisations, academics, policy – makers alike and supply chain practitioners that public procurement is one of the most vulnerable government activities when it comes to corruption. South African local government is no exception. Since from its early years, South Africa's local government system has demonstrated inertia to deal with procurement fraud and corruption. As a result, billions of rand have been lost to procurement corruption, with the Auditor-General (AG) South Africa countlessly flagging tendering fraud that perpetually cripples municipalities (AG, 2011/2012 - 2019/2020). This article was qualitative in nature and analysed data collected from secondary sources such as government reports, scholastic outputs, and journal publications. As the article found, there is reluctance by municipalities to detect symptoms related to tendering fraud. This is because the available legal instruments are deliberately ignored. Unethical leadership, recklessness by the involved officials and lack of reward systems for ethical practices amongst others are blameable for intentional fraudulent and corrupt activities in the procurement system. As part of contribution, the article culminated into a practice-based approach which suggest a number of actions municipalities need to take, and these include strengthening whistle blowing strategy and establishing independent institution that is solely responsible for combating procurement corruption at the local sphere of government.

Keywords: Ethical leadership, public sector, municipalities, tendering, South Africa.

Introduction and Context of The Study

“While most countries have made little to no progress in tackling corruption in nearly a decade, more than two-thirds of countries score below 50” (Corruption Index Report, 2020:4).

The quest to have a practice-based model in controlling, detecting, and responding to fraud and corruption in government procurement practices has grown inconsolably not only in South Africa but the whole world. Notably, there is general consensus among global corruption combating organisations, academics, policy – makers alike and supply chain practitioners that public procurement is one of the most vulnerable government activities when it comes to corruption. The Organisation for Economic Co-Operation and Development (OECD) Bribery Report (2014) shows that in 2014, 57% of corrupt activities in the public sector resulted purely from public procurement. In South Africa, more than 50% of the allocated R 800 billion procurement budget in the 2016/2017 financial year was lost to intentional abuse of the system, with R14.8 billion already being investigated by the Special Investigating Unit for procurement irregularities (Institute for Security Studies, 2021; Corruption Watch, 2020). Municipalities are no exception from the above problems as they report lost billions

lost to procurement corruption year in year out (*see Auditor – General South Africa, 2011 – 2020*). To this point, it is unarguable that enormous efforts have been made since the advent of democracy in 1994 and after the birth of democratic local government in 2000 to put stricter corruption prevention laws and policies, however, lessons on the ground have proved that such frameworks remain permeable. Cementing this proposition, the National Anti – Corruption Strategy (2020) admitted that acting alone state has failed to deal with public sector corruption, and further suggested that an overarching body responsible specifically for prevention of corruption is needed. In as far as procurement fraud and corruption is concerned, this article sought to contribute a conceptual model of dealing with corruption in local government where service delivery occurs most. With the model, the article demonstrates that ethical leadership more than existing laws can play the most crucial role in procurement fraud. This is in the quest to realise the principles of good governance for improved service delivery.

Methodological Approach

The research approach adopted when writing this article was a qualitative approach, whereby, secondary data gleaned from the existing materials such as published academic articles and papers, books, scholastic reports and government gazetted documents were largely considered. This approach, according to Creswell (2019), is concerned with descriptive data as opposed to numeric which is foregrounded in quantitative studies. Furthermore, the usage of official documents such as legislations, reports and policies strengthened the validity of arguments made in the article as it is believed that the authenticity or validity of such documents rests with the responsible government institutions.

Existing Legal and Policy Instruments Guiding Procurement in South African Local Government

Public procurement fraud and corruption is an old problem in South African public administration. The African National Congress, the liberation movement that has been in government since 1994, acknowledged through its Ready to Govern (1992) document, that procurement fraud and corruption in the public sector prevailed in the colonial and apartheid eras and need to be avoided in the new democratic dispensation. According to Shopola (2019), it was relentless that the construction of the post democratic state project could ignore the pernicious effects of corruption on the general society, and this necessitated constitutional pronouncement on the subject. As a result, there are legal and regulatory framework that underpin procurement practices in South African public service, and by extension to municipalities and independent entities that enters into business with the state. These legal frameworks are put in place to prevent and combat corruption in the entire public service and not only in local government.

Constitution of the Republic of South Africa, 1996

Section 217 (3) of the Constitution of the Republic of south Africa, 1996 requires that an organ of the state in the national, provincial and local sphere of government or any other public entities determined in national legislation to contracts for goods or services, it must do so in line with the system which is fair, equitable, transparent,

competitive and cost-effective. To this end, it can be argued that without transparent and accountable systems, senior municipal officials will use resources acquired through procurement mode to enrich themselves. Matsiliza (2013) mentioned that there is an expectation on part of municipal officials and political office bearers to contribute towards the creation of ethical culture when discharging public duties and uphold the constitution.

Municipal Supply Chain Management Regulations, 2005 (SCM Regulations)

The SCM regulation aimed at addressing all functions in the SCM environment (Republic of South Africa, 2005). Section 6 of the SCM sets out the oversight role that council plays in municipalities and the barring of council members from serving tender committees to prevent interferences in the tender process. Section 46 (1) of SCM Regulations, states the ethical standards with which officials and other role players in SCM must adhere to in order to ensure mutual respect and trust between roles players and the environment acting in a reasonable and fair manner. Furthermore, Section 46 (h) of SCM Regulations point out the functions of the code of ethical standards to assist the accounting officer in combating unfair, corrupt, and fraudulent practices.

Local Government: Municipal Financial Management Act 56 of, 2003

Local Government Municipal Financial Management, 2003 (Act 56 of 2003) states that regulatory framework for procurement at municipalities and other municipal entities in south Africa. Munzhedzi (2016:4) correctly argues that municipalities in South Africa are often vulnerable to corruption particularly during tendering processes. However, lack of accountability to mitigate check and balances in local sphere of government lead to poor service delivery and financial management challenges including corruption. This Act is similar to the Public Financial Management Act (1 of 1999). Just like the PFMA, the MFMA contains definitions of various forms of expenditures which are intended at guiding state or municipal officials in procuring of goods and services. In order to ensure that officials are reminded of the impetus and some operational clarifications of the MFMA the treasury, from time to time, releases circulars that complement the Act. Reference to this, is the most recent circular (Circular 01 of 2021/2022) which addresses the application of regulations 6(1) and 7(1) of the Preferential Procurement Policy Frameworks Act No. 5 of 2000.

Preferential Procurement Policy Framework Act, 2000(Act 5 of 2000)

The Preferential Procurement Policy Framework, 2000 (Act 5 of 2000) requires the government through procurement mode to give effects to section 217 (3) of the Constitution of the Republic South Africa, 1996 by providing a framework for the implementation of the procurement policy contemplated in section 217 of the Constitution of the Republic of South Africa to provide for matters connected therewith. Any conflict of interest that takes place during procurement processes may considered including disciplinary measures (Webb, 2010).

Prevention and Combating of Corrupt Activities Act, 2004(Act 12 of 2004)

The Prevention and Combating of Corrupt Activities, 2004 (Act 12 of 2004), aimed at placing a duty on senior public officials, or certain person holding a position of authority to report certain corruption transactions, to provide for extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities. Naidoo (2012) is of opinion that municipalities are required to periodically

conduct procurement audit relating to tenders and contracts, identify loopholes and malpractices in tendering processes. However, the implementation and enforcement of the above mentioned has been futile and corrupt activities remains in most municipalities (Corruption watch, 2020).

The Financial Disclosure Framework of 2001

In the year 2000 the government introduced the Financial Disclosure Framework which is meant for senior management services. This framework was aimed at addressing the conflict of interest, issues that constitute to ethical dilemmas in the public service. Although there are various mechanisms in place to eradicate unethical conduct in municipalities, senior public managers are regularly confronted with tendering fraud. As such, Munzhedzi (2016:1) correctly argued that public sector procurement and corruption are like inseparable twins in that they often cannot be separated. The author further added, that whenever one of the two is mentioned, other one has to follow in the next line.

Public Services Anti-Corruption Strategy 2020-2030

In 2002 the south African government established Public Sector Corruption Strategy (PSACS) aimed at combating and preventing corruption. However, it is evident that the PSACS is not successfully implemented in the public sector, as maladministration and unethical conduct remains in local government procurement processes. Webb (2015:151) maintains that South Africa has documented PSACS as tool to strengthen the existing measures introduced by government to curb prevent corruption in the public affairs. However, the applications of these mechanisms are in contrast, as the public officials are often confronted with corruption cases (Manyaka & Nkuna, 2014).

Ethical Dilemmas Facing Municipalities in South Africa – Threats and Dynamics

Recently, apart from what the media has been able stimulate in relation to ethical dilemmas playing out in public institutions, the State Capture Commission of Inquiry commonly known as Zondo Commission (presided by Deputy Chief Justice Raymond Zondo as its chairperson) painted a grim picture of how unethical practices have manifested in many state institutions especially as it relates to procurement fraud. Accordingly, an estimated amount of trillion rand has been lost over the past ten years (Nkosi, 2021). It is correct that unethical conduct has a negative impact on public trust in government. The 2021 local government elections in which the ANC failed to attain majority – leading to 62 hung municipal councils is a proof that people have lost trust in the leaders. As Mafunisa and Sebola (2014: 113) observed “...the appearance of unethical conduct can be as damaging as the actual act of unethical conduct”. This point is underscored by the former United States President F. Kennedy when he said that, despite non – existent of conflict of interest in the space of work it is still important to avoid its appearance at all cost. Indisputably, ethics have significant impact on the good governance project. There are many ethical dilemmas that hinders contemporary municipalities to provide good governance to the people (Mbudliwa, Dorasamy & Fagbadebo, 2020). Some of the most common ethical dilemmas with which senior municipal officials are confronted, include aspects such as corruption, administrative secrecy, information leaks, public accountability, and policy dilemmas. The discussion can be done under each of the above stated

instances as backed by Menyah (2010).

Administrative Secrecy

It is clear that in a democratic government citizen have right to information pertaining, what the government intends to do, and it would be on the public benefit for the administration of public services to be conducted openly. Singo (2018) mentioned that in the public sector secrecy form part of ethical dilemma, as it provides opportunities to cover up unethical conduct. Cranston, Ehrich and Kimber (2002) posits that senior officials use secrecy as tool to cover-up unethical conduct in government procurement processes. Singo (2018) stated that lake of administrative secrecy increase corruption activities in most municipalities. To this far, it can be argued that the secret conduct of public business, it is an area which results to focal ethical dilemma in the local government. In most instances, officials particularly those in higher positions use secrecy as an opportunity to cover up their unethical conduct especially in tendering systems. It generally accepted that in democratic government, citizens are entitled to know the services the government intends to deliver to them. As such, administrative secrecy cannot be used as a loophole to misuse state resources.

Information Leaks

Mbudliwa, Dorasamy and Fagbadebo (2020) A lack of ethical conduct by officials in local government leads people to behave in a manner that is not acceptable, as a results service become more poorer and lead to community protests. Singo (2018), argues that official information is often of such a sensitive nature for example tender requirements in the local government, that disclosure of the information can lead to corrupt practices for individuals whom are closed to municipal senior officials or improper monetary gains in expense of the state resources (Singo 2018). In essence, leaking official information at a date prior to the public announcement thereof is regarded as ethical dilemma. This mostly practiced by municipal managers in for personal gain to prospective bidders during procurement processes (Ndebele & Mdlalose, 2021). The Auditor General's report reveals that the lake of ethical leadership and moral behaviour in local governments is still dominant in South African municipalities (Brand, 2018: 2). As a result, it is clear that the mechanisms that are put in place to curb unethical conduct and promote good governance in the public service are vain.

Nepotism

Nepotism is favouritism shown to relatives, same ethnic group, sex, gender, belief, or association. Nepotism, money laundering, tampering with the tendering system in most municipalities, have frustrated residents in most townships and resulted in public protests (Mbudliwa, Dorasamy & Fagbadebo, 2020). Most municipalities including private and parastatals are experiencing a high volume of nepotism conduct (Mafunisa, 2014). Mbudliwa *et al.* (2020) is of opinion that in South African local government nepotism is often found in tendering processes where the adjudicators favour certain individuals over others prior to personal benefit. The opinion is backed up by Manyaka and Sebola (2014) by saying that, Senior public officials who engage in nepotism are often characterised by lake of ethical principles and sense of inferiority. To that end, it is evident that nepotism plays a prominent role in influencing decisions in the public services, particularly when it comes to awarding of contracts, tenders,

employment and other government services.

Corruption

Naidoo (2012: 656) asserts that the prevalence of corruption in South Africa has raised with highest rate in the public sector services. As such, constitutional values and mechanism that are put in place to curb corruption and promote good governance in South African municipalities, has also created opportunities for abuse of public resources by public officials at high level of management. Corruption is cited by scholars such as (Maserumule 2011; Shai 2017; Munzhedzi 2016; Naidoo 2013; Mafunisa 2013; Frank 2014) as silent form of unethical conduct. Corruption Watch Report (2021:7) reveals that ten municipalities which highest corruption complaints in past nine years, which include seven metropolitan municipalities and three local municipalities. the table below indicates number of corruption cases in each municipality. The on-going perception of corruption, fraud, maladministration, and scandals is the confirmation that there a need for increasable ethical leadership in local government procurement processes (Mbadliwa *et al.* 2020). To this far, the table 1.1 below shows the number of corruption cases in various municipalities.

Table 1.1 Number of reported corruption cases per municipality

Municipality	Reports
City of Johannesburg	700
Ekurhuleni	354
City of Tshwane	325
Ethekwini Metropolitan Municipality	166
City of Cape Town	125
City of Motlosana	51
Buffalo City	46
Mogale	45
Mangaung	39
Polokwane	39

Adopted from (Corruption Watch Report, 2021).

Manifestation of Procurement Fraud in Local Government

Mbadliwa *et al.* (2020) posits that the manifestation of procurement fraud in the public sector has resulted to fruitless, unauthorised, irregular expenditure and mal-administration and has damages economic and social programmes in local government. Vorster (2012) suggests that procurement fraud manifests itself in different forms as follows:

Bribery

According to Schoeman (2014:13), bribery is referred as the act of accepting offerings, giving, receiving, or soliciting something of value to influence the actions or decisions of public officials. Sama, Ndungura and Nsimbila (2021), are of the view that, bribery can be in a form of money, gifts, advantage to induce the action of someone to make decisions on your favour. As such, in South African local government services, bribery has become systematic, it has become a norm and citizens know that to

get effective services one has to pay a bribe (Mbadliwa *et al.* 2020). According to Corruption Watch (2021:8), the most common forms of corruption at local level are bribery (28%) procurement irregularities, (24%) employment irregularities (11%) abuse of power (9%) and embezzlement of funds (8%). As such, senior municipal officials are duty bound to create ethical climate to ensure that unethical behaviour is discouraged through sanctions. Whistle-blower data shows that the main hotspots for local government corruption occur within the office of the municipal manager and the office and the office of executive (Singo,2018). The table below shows municipal corruption hotspots.

Table A: Municipal Corruption Hotspots

Municipal Hotspots	Percentages'
Office of the municipal manager	30%
Metro/ local police	27%
Housing and human settlement	9%
Traffic and licensing	5%
Office of the executive	4%
Public works and infrastructure development	4%

Adopted from Corruption Watch Report (2021)

Fraud

Fraud refers to the act that occurs when public officials are given an opportunity to get rich fraudulently as a result of government expense, be it in the area of procurement, salaries and tendering (Gwanzura, 2012; Moloisi & Mukonza 2019). Fraud is regarded as a common manifestation of unethical leadership in the public service. Corruption Watch Report (2021) has shown that the door is often shut on the citizens who depends on municipal managers' committees and elected officials for basic amenities. as stated by over 5000 whistle-blower accounts received by corruption watch within nine-year period. Auditor General of South Africa (AGSA) found that the eight metropolitan municipalities and 44 district municipalities and estimated 200 local municipalities are poorly managed (AGSA, 2020). To this end, it can be argued that ethical leadership is a vacuum in south African local government. Municipalities are mostly associated with the stigma of senior officials who receives gifts such as bribes in order to make decisions that are in favour of certain individuals or families and friends, and they are highly involved in corruption (Mbudliwa *et al.* 2020 : 1643).

Kickbacks

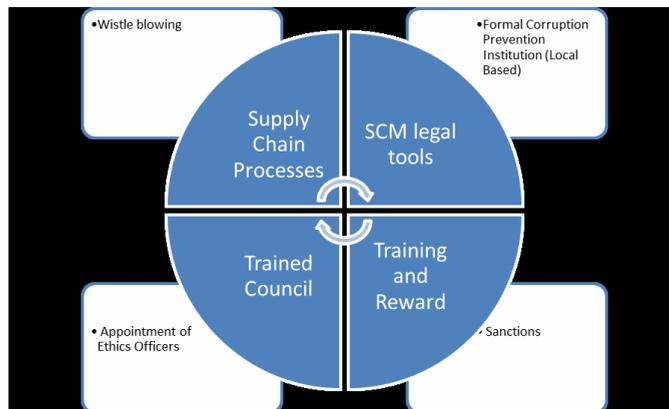
Kickbacks are cited Mafunisa (2013) as one of the most common forms of procurement fraud in South African municipalities. Kickbacks refers to a situation where senior municipal officials are given a token or money in exchange of favours, such tenders, employment and contracts in the expense of government (Singo, 2018). Tendering processes in local government is an area which corruption its higher and mal-administration worse than other levels of government (AGSA, 2020). Ngobeni (2016:26) posits that kickback is an off-record exchange of money between individuals

or more parties, as such it is difficult track and prosecute. Senior municipal official use kickbacks as tool to loot state resources, mostly on procurement systems, as it is difficult to detect and prosecute (Mafunisa, 2003). It is apparent to all; however, procurement fraud is impeding municipalities to realise ethical leadership in attempt of promoting good governance in local government (Sama, *et al* 2021).

Possible Remedies to Unethical Leadership and Procurement Fraud – the practice-based approach

The previous section largely covered the ethical dynamics facing municipal intuitions in relation to corruption and procurement fraud. One of the underscored aspects of unethical conduct in public procurement is that in undermines that strategic mission of local government, especially the one-off ensuring good governance. Attaining good governance has proven to be very challenging in municipalities when corruption is rife. In other words, good governance and procurement fraud or corruption do not coexist. The need for good ethical conduct in the management of public finance has also proved not only eminent but central to procurement systems. The following model serves as practical institution-based approach to remedying the procurement corruption and unethical leadership in the local sphere of government.

Figure 1: Practical institution-based approach to combating procurement fraud



Source: Authors' own compilation

Whistle Blowers

Singo (2018) posits that political office barriers are aware of the unethical behaviour that takes place within municipalities, such as fraud, bribery and kickbacks by their colleagues but failed to report for fear of reprisal. However, Whistle blowers can be used as an instrument to eradicate corruption in the public services, and senior management must ensure that its protected. Protection of whistle blowers is eminent. The demise whistle blowers such as the former Chief Director of Gauteng Health Department, Babita Deokaran who spoke out against corruption deals in 2021 is a clarion call for whistle blower protection. Whistle blowing by government officials can promote ethical principles and curb corruption in the public sector. In the year 2020, a record number of 857 whistle blower allegations against corruption within local sphere has been reported (Bhengu, 2021; Corruption Watch Report, 2021:2).

Appointment of Ethics Officers

According to Corruption Watch Report (2015) most municipalities does have ethics officers. It is evident that the absence of ethics officers in government entities deprive public official an opportunity of being taught about ethical theories and how they should behave in accordance with ethical principles. Sama, Ndungura and Nsimbila (2021) mentioned that, ethical officers must be appointed to promote ethical behaviour and professional conduct in local government services.

Sanctions

Sanctions are imperative in reinforcing ethical leadership in the public sector organisation. Whistle Blower Report (2021) reported 79% corruption cases in local government services. However, there is no punishment that is put in place in respond to unethical conduct by public officials particularly those are at senior positions. Senior municipal official must reinforce sanctions to discourage unethical manners within the areas municipalities. Mbudliwa *et al.* (2020: 1643) assert that municipalities are often politically contested terrain by various political parties. There is a need for punitive actions or sanctions in order to demonstrate that corruption combating efforts are fruitful. To this far, one can argue that government has been embroiled in rhetoric when it comes to dealing with corruption especially the sanctioning part on the officials found to have defrauded the municipal procurement system. It remains largely incumbent upon government to demonstrate its ability to sanction officials that are responsible for financial losses from the procurement system that are reported year in year out in the local sphere of government by the responsible bodies such as the AG and Special Investigating Unit.

Training and Rewards

The Conversation (2018: 2) reveal that the total of 257 municipalities in south African local government are in a catastrophic financial position. As a result, it is important for the municipalities to train and reward subordinates and senior managers about ethical principles to reduce ethical dilemma in the public services. Organising of training workshops dedicated to ethical behaviours and related should not be limited to leaders or SCM officials, all employees must attend the training so that ethical values and principles can be inculcated in the culture of an organisation. It needs to be a shared practice rather than an individualised one. In other words, once ethics are embedded in the culture of the organisation the reward system might be an added aspect of enticement and less of a need.

Moreover, Moloisi and Mukonza (2019) argue that public officials are extremely aware of the code of conduct, as such, there is concerns that some public officials disagree on the effectiveness code of conduct. However, the deficient of reward to public officials lead to vacuum of ethical conduct in local government. Appraisals and rewards system should be improved in local government areas to take into recognition the efforts of the subordinate public officials in order to encourage them to behave in an ethical manner (Mbudliwa *et al* 2020: 1643).

Conclusion

Procurement fraud and good governance do not coexist. Good ethical conduct

is prerequisite for good governance. This article has demonstrated procurement dynamics that are prevalent, and the findings show that municipalities are not short of legislation to deal with procurement corruption, the problem lies in officials being ethical. In other words, municipal officials intentionally undermine the existing procurement laws. As suggested in the proceeding section, and with extent to which procurement is marred with unethical activities, there is a need to deploy an institutional practice-based approach which will made it impossible for anyone to bypass laws. These included amongst others, the need to strengthen whistle blowing mechanisms, rewarding of ethical deeds and appointment of ethics officers. In light of the outcomes of this article, the authors conclude that the procurement fraud and corruption has become another pandemic [apart from popular Covid – 19 pandemics] in South African municipalities. It needs an urgent attention. Furthermore, in the spirit of the slogan that says 'local government is everybody's business' this article is a reminder to municipal officials as the custodian of the public purse and municipalities in general, that procurement is also everyone's business because it is only through procurement that peoples' aspirations become real. Municipal leaders also need to act ethically at all times to inculcate the spirit of ethics in the institutional cultures.

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