

From Paper-Based Procurement To E-Procurement: The South African Public Procurement Legislative Perspective

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Abstract	Article Info
<p>The public sector procurement processes in South Africa draws its mandates from a legislative framework which is anchored on section 195 of the Constitution of the Republic of South Africa. Therefore, migrating from paper-based procurement to e-procurement requires a legislative framework that will allow for the implementation of e-procurement processes. This stems from the fact that non-compliance with the legislative frameworks governing public sector procurement has a potential to plunge procuring institutions in to fruitless, unauthorised and irregular expenditure with dire implications which must be avoided at all cost. To this end, any form of non-compliance to the legislative framework governing public procurement has a gross potential to thwart successful implementation of e-procurement.</p> <p>The purpose of this empirical study based paper is to present findings on the impact that the South African public procurement legislative framework may have with regard to migrating from paper-based procurement to e-procurement. This paper is linked to the research objectives for a PHD study entitled “Developing e-procurement framework to enhance Supply Chain Management performance in the public South African public sector”.</p> <p>The study focused on National Treasury and four Provincial Treasury Departments in South Africa. (Limpopo, Gauteng, North-West and Western Cape Provincial Treasuries). The population of the study comprised of 108 officials and the sample of the study comprised of 84 officials. The study used random and purposive sample methods, and employed mixed methods which is qualitative and quantitative methods. Face-to-face interviews and self-administered questionnaires were used as data collection instruments. Due to COVID-19 pandemic face-to- face interviews could not be feasible in some instances as such virtual meetings and telephone interviews were conducted.</p> <p>The results show that the current South African legislative framework governing public procurement is more on paper-based procurement and is not explicit when it comes to e- procurement. The study recommends the need for government to align the current legislative framework to the e-procurement dispensation to enable expedite its investment on upgrading Information Technology infrastructure. The study will contribute to the body of knowledge and to the shaping of policy perspectives given that it contains data collected from technocrats responsible for implementing procurement function in government. Today, life creates many challenges for all and whilst these</p>	<p>Keywords: Influence, Migration, paper-based procurement, e-procurement, public procurement, legislative perspective and South Africa.</p>

challenges can create great benefits, they can also create uncertainty and confusion to some. Humanity needs to support the creation of positive influences and therefore create a collective growth and benefits, whilst recognising differences.

INTRODUCTION

Public procurement in South Africa operate in a legislated environment that stems from the Constitution of the Republic of South Africa, various Acts, Regulations, Circulars and Instruction Notes which regulate the use of petty cash, quotations and open bidding. According to Anthony (2018), the use of e-Procurement has been hailed as one of the intervention to enhance efficiency in the international public arena. He further indicates that to date, there are many countries that have implemented e-Procurement and that effect they have developed procedures and enacted legislation that enable the implementation of e-procurement method. To support this assertion, the Tanzanian government embarked on number reforms in the public procurement legal framework with an aim of supporting e-Procurement adoption (URT, 2016). Asian Development Bank (2013) hold the view that the legal and regulatory framework for public procurement must allow for e-Procurement so that governments can safely conduct the procurement process and award contracts electronically without fear of being legally challenged before the courts of law. Therefore, the purpose of this empirical study based paper is to present findings on the analysis of the impact of South African public procurement legislative framework on the implementation of e-Procurement hence the topic, from paper-based procurement to e-Procurement with regard to migrating from paper-based procurement to e- procurement: The South African public procurement legislative perspective.

1. Legislative framework governing public procurement in South Africa

According to Ambe (2016), public procurement practices in South Africa are managed in accordance with the multifaceted SCM processes and activities of government, which are regulated. There are a plethora of legislation regulating public procurement, however, this section will only discuss the legislative framework that have an impact on e-Procurement.

The Constitution of the Republic of South Africa, 1996.

Public procurement in South Africa draws its mandate from section 217 of the Republic of South Africa that prescribes that when an organ of state procure goods, services and works, such must be done in accordance with a system that must be fair, equitable, transparent, competitive and cost-effective. The researcher regards this section as a solid rock underpinning South African public procurement. To support this assertion, Anthony (2018) indicates that the Constitution sets out a standard for the implementation of procurement in South Africa. The above-mentioned section provides two critical dimensions which shapes public procurement in South Africa. van Greunen and van Niekerk (2010) indicates that section 217(1) of the Constitution relates to fairness, equitability, transparency, competitiveness and cost- effectiveness. Ambe and Badenhorst-Weiss (2012); Turley and Perera (2014) posit that section 217(2) relates to giving opportunity to government for using procurement as a lever towards addressing socio-economic imbalances created by the apartheid regime. Given the latter dimension, to date government has been able to enact other legislations paved way for using procurement to advance and protect certain groups or categories of persons. However, it must be indicated that the Constitution does not give any reference to e-Procurement.

2. The Public Finance Management Act (Act No. 1 of 1999).

The Public Finance Management Act, 1999, hereafter referred to as PFMA, gives effect to section 217 of the Constitution. It obligates Accounting Officers to manage public resources in an effective and efficient manner. Turley and Purera (2014) and Hanks, Davies and Perera (2008) hold a view that PFMA makes provision for the use of procurement as a policy tool towards fairness, equitability, transparency, competitiveness and cost-effectiveness. Badenhorst-Weiss (2012) and van Wyk (2011) indicate that PFMA advocates for the objective of good financial management in order to maximise service delivery through the effective and efficient use of limited resources. According to National Treasury (2018), government is the biggest buyer of goods, services and works in South Africa, to this end R938 billion was spent through procurement processes across all sphere of government in 2016/17 financial year. Furthermore, National Treasury (2016) indicates that if such money allocated to procurement can be used efficiently it can be a major source of relief to other distressed sectors in the country. It must be noted however that the PFMA does not give an expression to e-procurement, but rather outlining the fundamental principles of managing public resources.

3. Preferential Procurement Policy Framework Act (Act No. 5 of 2000) and its revised regulations.

This Act commonly known as the PPPFA is one of the critical legislation that proved that South Africa is confronting the history of the past caused by the apartheid regime with gross determination. To support the assertion above, Bolton (2006) argue that PPPFA pave a way for preferential procurement that is used as a wealth redistribution strategy in order to channel funds to discrete categories of economic actors. Furthermore, Ambe and Badenhorst- Weiss (2012) hold the view that PPPFA provides a framework that guides the application of a preference point system to achieve equal distribution of wealth. Moreover, Davey & Gatenbay (2018) argue that through PPPFA that government is able to use public procurement law as a means to redress socio-economic created by the past regime. PPPFA also does not give any expression or any mention of e-Procurement.

4. Preferential Procurement Regulations of 2017.

Linked to PPPFA, the researcher regards the Preferential Procurement Regulations of 2017(PPR) as another hallmark for government procurement law wherein government is seen taking drastic measures that will allow for the implementation of preferential procurement. Davey and Gatenbay (2018) holds the view that the PPR provides a mechanism to assist certain groups of persons. In supporting this assertion, the PPR expressed three dimensions that allow government to use procurement to advance its socio-economic agenda. Firstly, Regulation 4(1) of the PPR allows organs of state to stipulate pre-qualification of the bid where only specified categories of groups/persons will be eligible to tender. In this regard only service providers falling within the selected B-BBEE status of contributor can tender for a particular bid. Secondly, Regulation 9(1) of the PPR allows organs of state to make sub-contracting a requirement of a bid for contracts above R30 million where feasible. Thirdly, Regulation 11 (1- 2) allows organs of state to use objective criteria to award a bid to a bidder who did not score the highest points on price and B-BBEE. Martineau (2017) opines that the PPR contain aggressive measure to ensure greater economic participation by small and black owned enterprises. However, it is important to indicate that the PPR is a matter before the courts as per the *Afribusiness NPC v The Minister of Finance* (Case no 1050/2019) [2020] ZASCA 140 (2 November 2020) where the constitutionality of the regulations is being challenged especially Regulations 3(b) of the PPR.

5. National Treasury Instruction notes

National Treasury issues instruction notes and circulars that provide directives on the implementation of procurement. There are three instruction notes that demonstrated government's intention to migrate from traditional or paper-based procurement to e- Procurement. Firstly, National Treasury SCM Instruction No. 4A of 2016/2017: Central Supplier Database, gives effect to the introduction of the Central Supplier Database (CSD). To this end, all service providers intending to do business with organs of state must be registered on the CSD. National Treasury SCM circular No. 2 of 2017/18 introduced the g-Commerce which is a platform that enables government to procure ICT-related commodities and services.

Organs of state can invite, evaluate and adjudicate bids through this platform electronically. However, it is important to indicate that this platform is only applicable to ICT commodities, which is a small proportion compared to other commodities that organs of state procure using the manual system, which involves huge sums of money. Thirdly, National Treasury Instruction Note No. 1 of 2015/16 introduced the e-Tender Publication Portal that is used as a platform to publicise tender information including uploading tender documents. Anthony (2018), extols National Treasury's decision for introducing the portal and regards it as a positive step towards digitising procurement function in the South African public sector.

6. Electronic and Communication Transaction Act (Act No. 25 of 2002)

The principal objective of the Electronic and Communication Transaction Act (Act No. 25 of 2002), referred hereafter as ECTA is centred around promoting use of e-government services and electronic transactions between private and public bodies. This Act provides a fertile ground on which e-Procurement can be implemented in South Africa. To support this assertion, section 20 of the Act gives expression to automated transactions and provides that an agreement may be formed where all parties to a transaction or either one of them uses an electronic agent. Moreover, section 22(2) legitimises the conclusion of contracts through data messages, which could be directly linked to e-Procurement. It provides that an agreement concluded between

parties by means of data messages is concluded at the time when and place where the acceptance of the offer was received by the offerer.

7. Analysis of the legislative framework discussed above.

The purpose of this section is to give context to the discussion and the findings of the study. The discussion above reveals that the South African legislative framework regulating procurement is focussed on traditional/paper-based procurement. According to Anthony (2018), the legislation that regulates public procurement in South Africa does not make specific reference to e-Procurement which has a negative bearing on the implementation of e- Procurement. Furthermore, Anthony (2018) holds the view that e-Procurement falls squarely on ECTA especially on section 20 and 22(2) of the Act. While concurring with the assertion by Anthony, it is important to highlight three dimensions. Firstly, the Constitution provides fundamental principles which serve as the bases for the implementation of procurement function. The PFMA also bestow an obligation to the Accounting Officer to manage public resources effectively and efficiently and prescribe to them a framework for implementing SCM. Thirdly, the PPPFA and its regulations mainly focus on enabling government to use procurement to address socio-economic challenges confronting the country.

Presentation of results.

This section discusses the findings of the PHD study under the theme developing e- Procurement framework for enhancing Supply Chain Management performance in the South African public sector. The presentation of results are divided in to two categories, which is the quantitative and Quantitative results.

1. Quantitative data

1.1 The current legislation is based more on paper-based procurement than on e- Procurement

Respondents were required to indicate to rank their responses in respect of the above- mentioned statement according to strongly agree, agree, neutral, disagree and strongly disagree. 48 (94%) of the respondents concur with the statement above that the current legislation regulating public procurement is based more on paper-based procurement than e-Procurement. In supporting the assertion by the majority of the respondents, Neupane, Soar, Vaidya and Yong (2014) indicate that the inadequacies in procurement policies and legislation present a major setback for government in the implementation of e-Procurement. Anthony (2018) opines that although ECTA gives expression to electronic transaction, majority of the legislative framework does not give expression to e-Procurement. The procedure manuals guiding the implementation requires procuring institutions to issue tender documents and also the submission of tender documents by suppliers.

1.2 Absence of legislation on e-Procurement may lead to non-compliance with SCM

In this regard respondents were asked to rate the validity of the above-mentioned statement according to strongly agree, agree, not sure, disagree and strongly disagree. 38 (78%) of the respondents hold the view that the absence of legislation on e-Procurement may lead to non-compliance with SCM. Interesting to note is the 24% (12) respondents who holding a view that absence of legislation on e-procurement may not lead to non-compliance with SCM. The assertion by the majority of the respondents resonates with literature. Anthony (2018), regulating e-Procurement will not only lead to compliance with the law and legal certainties but will also enhance fairness and increase competition. Moreover, Khorana, Ferguson-Boucher and Kerr (2014) assert that the implementation of e-Procurement is likely to be successful only when its processes are aligned with the legal framework. Therefore, it remains critical that the legislative framework regulating public procurement must give expression to e-Procurement failure which may lead to procurement dilemmas and uncertainty in the execution of procurement function resulting in litigations that must be avoided at all cost.

1.3 National Treasury Instruction Notes are the only legal documents for e-Procurement.

Respondents were asked to rate the validity of the statement above according to strongly agree, agree, not sure, disagree and strongly disagree. While majority of the respondents 53% (27) hold the view that that National Treasury Instruction Notes are not the only legal documents for e-Procurement, 31% (16) respondents hold a contrary view. The 16% (8) of the respondents who are not sure of their position to the statement posed cannot be ignored which according to the researcher might be prompted by the extent to which the legislation express e- Procurement and also to a certain extent, the extent of the need to have explicit legislation that relates to e-Procurement. To support the assertion by the majority of the

respondents, Anthony (2018) holds the view that the legislative framework governing procurement in South Africa does not give clear expression when it comes to e-Procurement. He asserts that although the Electronic Communications and Transactions Act, 2002, provides a broad statement with regard to e-Procurement. Critical to note is the implications that may arise out of having the ECTA providing general statements and not being explicit to e-Procurement. This may amongst others include massive interpretation on the implementation of e-Procurement that has the potential to attract audit queries and litigations that must be avoided at all cost.

1.4 National Treasury Instruction Notes are sufficient legislative documents for the implementation of e-Procurement

Respondents were required to express their understanding as to whether National Treasury Notes are sufficient legislative documents for the implementation of e-Procurement. 60% (31) of the respondents hold the view that National Treasury Instruction Notes are not sufficient legislative documents for the implementation of e-Procurement. While there is 28%

(14) who agree to the statement, it remains worrisome that there is a noticeable trend of 12%

(6) respondents who were not sure of their responses. Although the 12% (6) appears to be small number, it has a dire implication for public procurement where the environment is highly regulated and compliance is non-negotiable.

2.2 South African legislative framework does not talk about e-Procurement

Respondents were asked to rate the validity of this statement according to categories strongly agree, agree, not sure, disagree and strongly disagree. 47% (24) of the respondents hold the view that the South Africa legislative framework does talk about e-Procurement. The results also show that 41% (21) respondents support the notion that the South Africa legislative framework governing procurement does not talk about e-Procurement while 12% (6) respondents were not sure of their response. This finding is similar to the one presented in item

4.1.5 above where there is a noticeable number of respondents not sure of their responses. The greatest point of concern in the implication of uncertainty by procurement officials who are required to comply with procurement prescripts. The Asian Development Bank (2013) argue that most of government institutions make crucial technical decisions without looking at policy and legislative implications of such decisions. Davila, Gupta and Palmer (2003) argue that lack of clear standardised laws talking to the automation of business processes on procurement has a massive impact in retarding the speed of adoption and the use of e-Procurement. Moreover, Asian Development Bank (2013) posits that the procurement legislation and policies should acclimatise the existing paper-based procurement process to the electronic environment.

2.2. Qualitative data

2.1 The current legislation gives clear directions for implementing e-Procurement

Respondents were asked whether they think the current legislation governing public procurement gives clear directives for the implementation of e-Procurement. 54% (13) respondents were of the view that the current legislation does not give clear directions for the implementation of e-Procurement. The reasons indicated by respondents revealed key dimension that require critical attention. Firstly, the current legislation is still mainly on paper-based procurement and there are no prescribed guidelines and procedure manuals that guide officials on the implementation of e-Procurement. Secondly, respondents were of the view that e-Procurement must be seen as an enabler towards the realisation of section 217 of the Constitution. Thirdly, respondents indicated that e-Procurement is a tool that can be used to execute the SCM function, therefore, we cannot expect the legislation to be detailed as the paper-based procure is.

46% (11) of the respondents were of the view that the current legislation does gives clear directions for the implementation of e-procurement. Amongst others reasons stated by respondents was that e-Procurement is only an enabler to the procurement function as such there should be no expectation for the legislation to talk about e-Procurement. Secondly, they indicated that the currently legislation provides a general framework for public procurement which e-Procurement comes in as an enabler to the general framework provided. Thirdly, they indicated that the same procedure manuals and prescripts can be applicable when implementing e-Procurement.

Notable to the results above is how the two contradicting views (those who agree and those who disagree to the statement) correctly made reference to section 217 of the Constitution to support their responses. Davey and Gatenbay (2018) assert that the law governing procurement in South Africa is governed by section 217 of

the Constitution, which obligates organs of state to procure goods, services and works in a manner that is fair, equitable, transparent, competitive and cost-effective. Furthermore, Anthony (2018) holds the view that legislation regulating procurement in South Africa does not give specific reference to e-Procurement except the broad and general statements stipulated in the ECTA. Moreover, Makosa and Mwangangi (2018) hold the view that e-Procurement can be a means to support

government policies for the purchasing of the required products. Makosa and Mwangangi (2018) cautions that having a legal framework that relates to e-Procurement is not only about a matter of compliance but it goes a long way in giving both government and service providers trust and confidence in the e-Procurement system used to procure goods, works and services. It is however, the researcher's view that in order to curb against uncertainty and varied interpretation towards implementation, there is a need for instruction notes, circular and procedure manuals that will guide the implementation of e-Procurement. The same approach used by National Treasury when introducing SCD, g-Commerce and the e-Tender Publication Portal can be used.

2.2 The absence of clear legislation on e-Procurement may have bearing on the implementation thereof.

One of the questions to the respondents was intended to understand the bearing that the absence of clear legislation on e-Procurement will have on its implementation. Majority of the respondents 58% (14) were of the view that the absence of clear legislation on e-Procurement will have a bearing on the implementation of the system. There are various reasons indicated by respondents to substantiate their answers. Firstly, respondents indicated that government departments implement programmes that are legislated or that are prescribed or outlined in the instruction notes, circulars and procedure manuals, therefore without such directives it might not be easy to implement e-Procurement. Secondly, they indicated that there has to be a clear expression in terms of how to deal with a situation whereby there is a load-shedding while the bidder is in the process of uploading a tender document. Thirdly, they indicated that government is rule driven, as such without a clear legislation it might lead to officials execute their work with fear and uncertainty that may result in various interpretation giving rise to litigations that need to be avoided at all material times. Lastly, respondents indicated that as it stands, the absence of clear legislation on e-Procurement may suggest that its implementation is not compulsory resulting in reluctance or resistance to implement. Therefore, there is a need to for a special dedication on e-Procurement prior its implementation.

42% (10) of the respondents hold the view that the absence of clear legislation may not have a bearing on the implementation thereof. Amongst other reasons indicated by respondents were that the implementation of e-Procurement depend upon the ability to interpret the existing legislation in relation to e-Procurement and not any constraint in law. Secondly, respondents indicated that e-Procurement must be viewed as an enabler towards the realisation of section 217 of the Constitution, therefore there is no need for additional legislation. Lastly, they indicated that there is no need to legislation except to expand the existing legislation with circulars, instruction notes and procedure manuals.

Although respondents hold the view that the absence of clear legislation will not have a bearing on the implementation thereof, the researcher is of the view that without a clear legislative expression on e-Procurement may see government leaning towards negative audit outcomes, which currently remains key to measure the effective performance of SCM. Furthermore, this assertion does not ignore the fact that e-Procurement system will come as a catalyst in assisting government towards the enhancement of fairness, transparency, equitability, competitiveness and cost-effectiveness in the procurement function. To support this assertion the Asian Development Bank (2013) stipulates that the legal and regulatory environment for public procurement must allow for e-Procurement to safely conduct the procurement process and award contracts electronically. Furthermore, Bhaukaurally and Ramesh (2017) stipulates that having inadequate legislation and government policies have the potential to affect the implementation of ICT systems. Moreover, Eadie, Perera, Heaney and Carlisle (2007) asserts that the uncertainties on the legal and legislative position of e-Procurement is regarded as one of the critical barriers to the implementation of e-Procurement.

Addo (2019) regards a legal framework as the basis of any business transaction, private or government, since it defines the obligations and responsibilities of both parties involved in a transaction. It is therefore, the researcher's view that as long as procurement processes still require an originally completed and signed tender document, the implementation of e-Procurement will remain an area riddled with challenges. The caution by

the World Bank (2003) that it is wise to keep the legal framework open and flexible enough to avoid any major changes due to short technological innovation cycles cannot not be ignored.

2.3 Enhancing legislative framework for e-Procurement can contribute towards reducing the time that government takes to pay service providers

Respondents were asked whether they think enhancing the existing legislative framework to cover e-Procurement can contribute towards reducing the time that government takes to service providers. Majority of the respondents 71% (17) supported the statement above while 29% (7) had a contrary view. Amongst other reasons indicated by the majority of the respondents is that legislative enhancement in this regard will contribute towards reducing the turn-around times for government to pay service providers as long as the e-Procurement system has a functionality for receiving and payment of invoices. Secondly, respondents indicated that some of the delays of processing payment may be attributable to the control environment or protocols linked to manual processing of payments that cannot be ignore. Thirdly, it was indicated e-Procurement will come with clear protocols with regard to electronic signatures and the submission of invoices electronically. Lastly, it was indicated by respondents that the legislation regulating the payment of service providers has been there, however, if e- Procurement is implemented, definitely it is going to reduce the time government take to pay service providers since all processes will be automated. SARS was given as one good example of government using automated processes where they are able to process payments quicker.

The respondents holding a contrary view indicated various reasons to support their response to the posed statement. Firstly, they hold the view that in government there are no payments that are effected manually, however they indicated that there are a number of reasons that results in the delay of payment which includes the attitude of officials towards their work and also who do not understand the implications of not processing invoices timely to service providers. Secondly, they indicate that the issue of paying service providers requires a mind shift where officials will regard SMMEs as key strategic partners with that understanding of their value contribution to the economic main stream of the country. Gauteng Provincial Treasury was cited as one of the departments using e-Invoicing and they are able to pay suppliers within 15 days, under legislation in this regard does not have an impact.

2.4 Legislation is a critical enabler for the implementation of e-Procurement

The statement above sought to establish from respondents if the legislation is a critical enabler for the implementation of e-Procurement. Majority of the respondents 83% (20) hold the view that legislation is a critical enabler for the implementation of e-Procurement. Their varied responses revealed four dimensions that are key for this study. Firstly, they hold the view that legislation will ensure uniformity in the application of e-Procurement. Secondly, respondents indicated that legislation will make the implementation of e-Procurement mandatory and thus making it enforceable. Thirdly, respondents hold the view that without legislation there will be lot of audit queries linked to the implementation of e- Procurement which is mainly against the objective of migrating traditional/paper-based procurement system to e-Procurement. Lastly, respondents indicated that legislation will protect the integrity of e-Procurement system, enhance transparency and fairness. The dimensions alluded above demonstrated an understanding by respondents of the relationship that exists between legislation and uniformity in the implementation of e-Procurement, legislation and transparency, fairness and efficiency as well as the linkage between legislation and audit queries. The assertions by respondents above resonates with literature. Shatta, Layaa and Shayo (2020) hold the view that legal framework is regarded as dominant critical success factor which influences other critical success factors towards e-procurement adoption in public sector. The study conducted by Laryea, Ibem, Pagiwa and Phoi (2014) on electronic procurement in the South African construction sector revealed that absence of a definite policy framework on e- Procurement is a great barrier towards its successful implementation. Furthermore, Bulut and Yen (2013), through legislation on e-Procurement, digital signatures and electronic records are accorded the same status as that of paper-based procurement. Moreover, Afolabi, Ibem, Aduwo, Tunju-olayeni, and Oluwanmi (2019) argue that the acceptance of the legality of electronic contracts as one of the critical success factors of the implementation of e-Procurement.

17% (4) of the respondents are of the view that legislation is not a critical enabler for the implementation of e-Procurement. Amongst other reasons indicated by respondents is that already section 217 of the Constitution enables government to implement e-Procurement. Furthermore, respondents regard e-Procurement as an enabler towards the realisation of the existing legislation. Lastly, respondents hold the view that there are other

factors other than legislation that are critical for the implementation of e-Procurement which includes amongst others the attitude of procurement officials and SMMEs. One respondent indicated that “Government already has promulgated procurement laws that regulates procurement therefore, it only requires an appreciation and understanding on how e-Procurement fits in”. Without underestimating the reasons by the respondents above, it remains critical to appreciate the value proportion of legislation especially in an environment where public purse is involved. It is also critical note the caution by the World Bank (2003) that it is wise to keep the legal framework open and flexible enough to avoid any major changes due to short technological innovation cycles.

2.5 National Treasury Instruction Notes alone are enough of a guideline for effective implementation of e-Procurement

The statement above required respondents to indicate if National Treasury Instruction Notes alone are enough guidelines for effective implementation of e-Procurement. 75% (18) of the respondents are of the view that National Treasury Instruction Notes alone are not enough guidelines for effective implementation of e-Procurement. In supporting their response, respondents indicated that Instruction Notes provide guidance to legislation, but as it stands, there is no legislation that talks about e-Procurement, hence Instruction Notes alone are not sufficient. Secondly, respondents indicated that there is a need for gazetted legislation than instruction notes. Thirdly, respondents indicated that National Treasury Instruction Notes provides generic guidelines that does not respond to the provincial socio-economic imperatives hence there is a need for provinces to have their customised Instruction Notes on e-Procurement that will talk to their provincial socio-economic dynamics. Classic example in this case is the Western Cape Provincial Treasury that issued its provincial Instruction Note that enable them to implement their own e-Procurement solution through SAP (Western Cape Treasury, 2019). Moreover, the Asian Development Bank (2013) indicates that in addition go procurement law, procurement policies and procedures must be developed taking into inconsideration all the factors that may affect e-Procurement. The Asian Development Bank (2013) further argue that such procurement policies and procedures should be redefined to include management practices and transactions in the electronic environment, addressing all procurement processes that are currently executed through the manual or paper-based procurement process.

25% (6) of the respondents hold the view that National Treasury Instruction Notes are enough to guide the implementation of e-Procurement. Amongst the reasons advanced is that what is only required is for the Instruction Notes to be reviewed from time to time to ensure that they remain relevant to the changes in the technological space. One respondent indicated that “The instruction notes that National Treasury provides are sufficient for providing guidelines since section 217 outlines the framework for implementing procurement function”. Furthermore, respondents indicated that there are other areas that warrant critical attention for the implementation of e-Procurement which are outside National Treasury Instruction Notes that include change management, soft skills to effect implementation, and proper planning on the implementation of e-Procurement. Although the 25% (6) support the notion that National Treasury Instruction Notes are enough guidelines for the implementation of e-Procurement, however there is a noticeable thin line that connects their arguments to the majority of the respondents. There is an acknowledgement of the fact that there are other variables that need to be considered for the effective implementation of e-Procurement. Bulut and Yen (2013) posit that change management and adoption of e-Procurement by government and SMMEs have been identified as one of the major challenges confronting the successful implementation of e- Procurement. This assertion shows that there is a lot that need to be taken into consideration for the successful implementation of e-Procurement without only focussing on National Treasury Instruction Notes.

CONCLUSION

The findings presented and discussed above supported by literature revealed some dimensions that cannot be ignored. Firstly, the findings revealed that legislation is regarded as a critical enabler for effective implementation of e-Procurement. Secondly, the legislative and regulatory framework governing public procurement in South Africa is more on paper-based or manual procurement that has a potential to hinder effective implementation of e-Procurement. Thirdly, the legislation/ Act that was supposed to give clear expression about e-Procurement (ECTA) is only making broad general statements making it difficult for using it as a point of reference to implement e-Procurement. Fourthly, the absence of legislation that have clear

expression about e-Procurement may have a negative bearing on the implementation thereof since it might not be considered as mandatory.

RECOMMENDATIONS

The following recommendations are proposed in respect of the findings presented and discussed above.

The existing legislative and regulatory framework governing public sector procurement must be reviewed/aligned to ensure that it gives expression to e-Procurement.

The alignment of the existing legislative and regulatory framework governing public procurement must be open and flexible enough to accommodate changes within the Information Technology environment. Otherwise it might be difficult to constantly amend the legislation to accommodate the frequent changes in the Information Technology environment.

The amendment/review of legislation must be premised on the view of making legislation an enabler, and not legislation for compliance purposes.

BIBLIOGRAPHY

- ADDO, S.K. 2019. Challenges of Adopting e-procurement in the Ghana Public Sector: A survey in the Ministry of Finance. *Scholarly Journal of Arts & Humanities*, 1(7):44-80.
- AFOLABI, A., IBEM, E., ADUWO, E., TUNJU-OLAYENI, P. AND OLUWANMI, O. 2019. Critical Success Factors (CSFs) for e-Procurement Adoption in the Nigerian Construction Industry. *MDPI*, 9(47):2-18.
- AMBE, I.M. 2016. Procurement trends and developments in South Africa. *Research Journal for Business and Management*, 3(4): 277-290.
- AMBE, I.M. AND BADENHORST-WEISS, J. 2012. Procurement challenges in the South African public sector. *Journal of Transport and Supply Chain Management*, 6(1):242- 261.
- ANTHONY, A. 2018. The use of e-procurement in South African public procurement law: Challenges and prospects. *Law, Democracy and Development Journal*, 22(3):39-47.
- Asian Development Bank (ADB). 2013. *E-Government Procurement Handbook*, Mandaluyong City, Philippines [online] <http://www.adb.org/e-government-procurement-handbook> (Accessed 23/07/2019).
- BHAUKAURALLY, N. AND RAMESH, V. 2017. Challenges and benefits of adopting e- procurement – Reference to Mauritanian economy. *International Journal of Management and Applied Science*, 3(5):92-96.
- BOLTON, P. 2006. Government procurement as a policy tool in South Africa. *Journal of Public Procurement*, 6(3):193-217.
- DAVEY, J. AND GATENBY, A. 2018. *Government Procurement Review*. United Kingdom, Law Business Research LTD.
- DAVILA, A., GUPTA, M. AND PALMER, R. 2003. Moving Procurement Systems to the Internet: The Adoption and Use of E-Procurement Technology Models. *European Management Journal*, 21(1):11-23.
- EADIE, E., PERERA, S., HEANEY, G. AND CARLISLE, J. 2007. Drivers and barriers to public sector e-procurement within Northern Ireland's construction industry. *Journal of Information Technology in Construction*, 12(3):103-120.
- LARYEA, S., IBEM, E., PAGIWA R. AND. PHOI, R. 2014. Electronic procurement in the South African construction sector: Case study of two government departments in Gauteng Province. 2014 Conference on Infrastructure Investments in Africa. Livingstone, Zambia.
- MAKOSA, P. AND MWANGANGI, P. 2018. Factors influencing e-procurement implementation in public sector in South Sudan. *International Journal of Supply Chain and Logistics*, 2(2):1-23.
- MARTINEAU, F. 2017. New Preferential Procurement Regulations. Polity. New Preferential Procurement Regulations (polity.org.za) (Accessed 18 July 2021).
- Mose, M. J., Njihia, M. J. and Magutu, M. O. 2013. The Critical Success Factors and Challenges In E-Procurement Adoption Among Large Scale Manufacturing Firms In Nairobi, Kenya. *European Scientific Journal*, 9(13):375-401.
- TURLEY, L. AND PERERA, O. 2014. Implementing sustainable public procurement in South Africa: Where to start. *International Institute for Sustainable Development: South Africa*.
- NATIONAL TREASURY. South Africa. State of transparency in public procurement. 2018. Pretoria: Government Printer.

- NATIONAL TREASURY. South Africa. Supply Chain Management Review. 2016. Government Printer: Pretoria.
- NATIONAL TREASURY. South Africa. 2015. Factsheet on e-tender publication portal for government. 2015. Pretoria, Government Printer.
- NATIONAL TREASURY. South Africa. 2016. National Treasury SCM Instruction No. 4A of 2016/17: Central Supplier Database. 2016. Pretoria: Government Printer.
- NATIONAL TREASURY. South Africa. National Treasury SCM Circular No.2 of 2017/18. Utilisation of g-Commerce for the procurement of computers, laptops, peripherals and consumables on SITA contract. 2017. Pretoria: Government Printer.
- NEUPANE, A., SOAR, J., VAIDYA, K. AND YONG, J. 2014. Willingness to adopt e-procurement to reduce corruption: results of the PLS path modelling. Transform. Gov. People Process Policy, 8(4):500-520.
- REPUBLIC OF SOUTH AFRICA. 1996. The Constitution of the Republic of South Africa as adopted by the Constitutional Assembly on 8 May 1996 and as amended on 11 October 1996. Pretoria: Government Printer.
- REPUBLIC OF SOUTH AFRICA. 2002. Electronic Communication and Transaction Act, N0. 25 of 2002. Government Gazette, 446(23708) Aug. 1-80.
- REPUBLIC OF SOUTH AFRICA SOUTH AFRICA. 2000. Preferential Procurement Policy Framework Act, No. 5 of 2000.
- REPUBLIC OF SOUTH AFRICA. 1999. Public Finance Management Act, N0. 1 of 199 and as amended by Public Finance Management Act, No. 29 of 1999. Government Gazette, 33059, March.1-82.
- REPUBLIC OF SOUTH AFRICA. 2017. Preferential Procurement Regulations issued in terms of Public Finance Management Act, No.1 of 1999 and as amended by Public Finance Management Act No. 29 of 1999. Government Gazette, 20(40553).
- SHATTA D.N. LAYAA, J.N. AND SHAYO F. 2020. Legal Framework Influence towards e- Procurement adoption model in developing countries: buyers' - suppliers' perception in Tanzania. International Journal of Applied Research in Management and Economics, 3(2):1-12.
- THE WORLD BANK. 2003. Bangladesh country procurement Assessment Report. [online], available at www.worldbank.org (Accessed on 14/03?2019).
- VAN GREUNEN, D. AND VAN NIEKERT, J. 2010. Implementation of regulation based e- procurement in the Easter Cape provincial administration. African Journal for Business Management, 4(17):3655-3665.
- VAN WYK, H.A. 2011. Are the financial procurement policies for out outsourcing government functions adequate? Journal of Public Administration, 46(4):1338-1350.
- WESTERN CAPE PROVINCIAL TREASURY. 2019. Western Cape Provincial Treasury Circular No. 29/2019. Central Supplier Database (CSD): Western Cape Supplier Evidence Bank (SEB). Western Cape Provincial Government: Cape Town.