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Acting CPO enlightens commission on government's procurement structures

Acting chief procurement officer Ndleleni Mathebula spent the day on Tuesday unpacking the inner workings of government's massive procurement system. It is governed by an impressive legislative framework, he said, but the challenges are big. The state, he said, spends on average R800-billion per annum on procurement, and the degree to which processes are flouted, is worrying.

He was being cross-examined by Leah Gcabashe SC, a member of the evidence leader team of the commission into state capture, headed by deputy chief justice Raymond Zondo. The commission was in day two of public hearings.

Mathebula started off by describing the successes and weaknesses of the current legislative framework that governs public procurement, as well as how it can be enhanced. This, he said, was with the objective of bettering systems, which are currently fragmented and not supportive of each other.

"There's a directorate [within Treasury] that deals specifically with irregularities, and this unit then collaborates with law enforcement agencies ... but they still experience difficulties to curb occurrence [of tender corruption]," he said.

With the Public Procurement Bill, which will soon be made available for public comment, Treasury hopes to secure tighter controls of not only the contract processes in procurement, but also the consequence management systems. Public participation in the procurement process is also given substantive attention in the bill.

Supply chain management

He then went on to explain the structures, within departments and state-owned entities, that oversee the processes of procuring goods and services as and when these are needed. These include the committees that handle tenders at different phases.

Mathebula also elaborated on the motivation behind Treasury's policies on supply chain management, expressing the differentiations across the legal framework. This climate, in which national departments' policies may differ from and contradict provincial laws, and vice versa, has a significant impact on how much government ends up paying to meet its service delivery goals.

Few consequences for transgressors

Another challenge for Treasury is the enforcement of consequences for transgressors who violate clear prescripts determined for procurement. Mathebula noted that although the Public Finance Management Act (PFMA) guides on how this can be regulated, it is often the case that it is not applied. Gcabashe then asked what steps are usually taken where the intent to abuse legislation is picked up by Treasury.

“When we pick up abuses of the system, there are processes prescribed in terms of public service regulations to deal with officials,” said Mathebula. He added that, however, Treasury can only make recommendations to the relevant accounting officers, with the expectation that they will act. Treasury is also unable to track if recommendations are complied with.

Where an investigation has been conducted by Treasury and there are findings of violation of regulations, the affected contract is cancelled, said Mathebula, and the supplier is then barred from doing business with government. The Prevention and Combating of Corrupt Activities Act, section 28.3(ii), sets the limits of restriction of suppliers to ten years.

There is no central unit within Treasury, however, that keeps records of defaulters who are barred from the system. While his office keeps a list, so does the office of the accountant-general.

Frivolous use of deviation policy

Another worrying norm that his office has picked up is the tendency for departments to apply the process of deviations, even where this is not relevant.

“[Deviations] are allowed according to Section 217 of the Constitution, but must be as a result of an emergency, and not the norm.” He added that deviations are allowed in cases where there is a sole source of good or services, citing Eskom as an example of such. “Because Eskom is the sole supplier of electricity in the country, there is no expectation for competing bids, so a deviation under this circumstance is considered.”

He stressed, however, that where departments need to deviate from normal practice, this should be reported to the Auditor-General, particularly where the value of the contract is over R1-million. Information on where deviations have been applied for, and where they have been granted, is available on the website of the Office of the Chief Procurement Officer.

Gcabashe asked what the consequence has been for entities that deviate without good reason. Mathebula replied that in this case Parliament will step in to make the accounting officers answer.

One of the positives of the new bill, he added, is that it will give his office more powers to deal with entities that transgress from procedure.

Useful links:

[National Treasury](#)

[Office of the Chief Procurement Officer](#)

[Central supplier database – useful info and downloads](#)

Public Procurement Bill – [more information](#)

Public Finance Management Act – [more information](#)

[Prevention and Combating of Corrupt Activities Act](#)