

2023

Procurement Watch Report on Procurement Risk Trends



20 September 2023

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Abbreviations

BAC	Bid adjudication committee
B-BBEE	Broad-based black economic empowerment
BEC	Bid evaluation committee
CIDB	Construction Industry Development Board
CSD	National central supplier database
DBSA	Development Bank of South Africa
MFMA	Local Government: Municipal Finance Management Act, 56 of 2003
PFMA	Public Finance Management Act, 1 of 1999
POCA	Prevention of Organised Crime Act, 121 of 1998
PPPFA	Preferential Procurement Policy Framework Act, 5 of 2000
Prasa	Passenger Rail Agency of South Africa
Precca	Prevention and Combating of Corrupt Activities Act, 12 of 2004
SCM	Supply chain management
SOC	State-Owned Company

1 Introduction

This report presents an analysis of selected forms of procurement data between 2016 and 2023. It is the third Corruption Watch report on Procurement Risk Trends, following the first two reports that were published in [2021](#) and [2022](#) respectively. These reports specifically focus on trends in requests to undertake deviations and expand contracts, accompanied by an analysis of restricted suppliers. The data is drawn from reports submitted to National Treasury by all procuring organs of state. The analysis is made possible by Corruption Watch's online tool, Procurement Watch, which aggregates data from the individually published reports.

This report provides an update on the previous reports and identifies notable developments since the previous reporting period.

Making use of deviations and contract expansions can raise red flags and indicate a lack of planning for procurement requirements. However, it is important to note that deviations and contract expansions do not necessarily indicate any abuse of the public procurement system.

There may be perfectly valid reasons for deviating from a prescribed procurement procedure or for expanding an existing contract. For example, if an organ of state wishes to acquire a unique piece of scientific equipment that is manufactured by only one supplier, there is no point in inviting public tenders for the supply of such equipment even though the value of the envisaged acquisition may be far above the threshold for the mandatory use of open bidding methods of procurement. Using the open bidding procedure would in fact be a waste of public resources since it would not generate competition among suppliers. Instead, under such circumstances, procurement rules allow the relevant organ of state to deviate from the open bidding procedure and to contract directly with the sole supplier of the equipment.

It is accordingly important to approach data on deviations and contract expansions within the context of the relevant rules governing public procurement generally and to keep in mind that these are accepted mechanisms within the procurement system. Each instance of deviation or contract expansion must consequently be carefully considered on its own merits within the regulatory framework to determine whether any abuse of the procurement system is evident.

One particularly useful tool in monitoring responses to abuse of the public procurement system is the restriction of bidders from conducting business with the state, generally called debarment. However, as with deviations and contract extensions, the mere debarment of a supplier does not immediately mean that the supplier abused the procurement system.

Suppliers may also be debarred for performance failure, that is, for failing to adequately perform in terms of the procurement contract. Again, care should be taken to fully understand the rules governing debarment of suppliers and to interrogate each debarment on its own terms.

In the following sections, the rules governing public procurement are briefly set out, starting with an overview of the statutory prescripts for public procurement in the ordinary course. Specific attention is consequently paid to the rules governing deviations from normal procurement procedures and expansion of contracts. The general mechanisms available to address abuse of the procurement systems are then briefly set out, followed by specific discussion of the rules governing debarment in South African public procurement.

Against the backdrop of this exposition of the regulatory regime governing public procurement in South Africa, data regarding deviations from prescribed procurement procedures, contracts extensions, and debarments is presented.



2 The statutory regime for procurement in the ordinary course

Public procurement is a highly regulated aspect of both public administration and economic activity in South Africa. That is, the invitation, adjudication, award, and implementation of contracts for the acquisition of goods and services by South African organs of state are governed by detailed legal rules, collectively referred to as public procurement law.

Public procurement law

Public procurement law in South Africa is notable for its explicit basis in the Constitution. Section 217(1) of the Constitution states that “when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective”. The legal principles upon which public procurement is based in South Africa are thus constitutionally guaranteed.

Despite the explicit set of principles contained in the Constitution, there is no coherent, single set of rules governing public procurement across all organs of state in South Africa. Instead, various statutory instruments apply to different (types of) organs of state.¹

Procurement by entities at national and provincial government level are for the most part governed by the Public Finance Management Act, 1 of 1999 (PFMA) and the Treasury Regulations, 2005, made under the PFMA. The Treasury Regulations include a single, dedicated regulation (16A) on public procurement that sets out the basic framework for procurement regulation at this level of government. However, Treasury Regulation 16A does not apply to entities listed in Schedules 2, 3B or 3D of the PFMA. The regulation thus applies to national and provincial government departments, constitutional institutions, national public entities, and provincial public entities, but not to major public entities, national government business

¹ For a list of these, see Quinot, G. (2020) Reforming Procurement Law in South Africa. *African Public Procurement Law Journal* 7(1):1-15 at <https://aplj.journals.ac.za/pub/article/view/27>.

enterprises, or provincial government business enterprises. The schedules to the PFMA contain exhaustive lists of all the entities falling within each of these categories.²

Below the level of regulation, the National Treasury has issued a large number of secondary legal instruments, variously termed Instruction Notes, Circulars, Frameworks, and Standards, that prescribe further, detailed rules on specific aspects of public procurement.³ Many of these, notably the Instruction Notes, are issued in terms of section 76 of the PFMA that grants National Treasury the power to issue binding instructions to entities covered by the PFMA relating to public procurement, among others.

At local government level, procurement is governed by the Local Government: Municipal Finance Management Act, 56 of 2003 (MFMA)⁴ and the Municipal Supply Chain Management Regulations, 2005 (Municipal SCM Regulations)⁵ made under it. In contrast to the Treasury Regulations under the PFMA, the Municipal SCM Regulations prescribe the legal framework governing public procurement at local government level in much more detail. Also, unlike the PFMA regime, National Treasury has no power to create additional legal instruments, such as instructions, to bind local government procurement. Any additional instruments National Treasury issues are only binding upon an individual municipality if that municipality's council formally adopts such instrument.⁶

Under both the PFMA and MFMA regimes, the basic premise of the regulatory scheme is that a particular organ of state designates its own public procurement system. This system must be set out in its SCM Policy that constitutes the immediate set of rules governing public procurement by that organ of state. The statutes and regulations thus only create the legal framework for an entity's own SCM Policy.

The only cross-cutting legislation governing public procurement specifically is the Preferential Procurement Policy Framework Act, 5 of 2000 (PPPFA),⁷ and the Preferential Procurement

² The PFMA can be found at http://www.saflii.org/za/legis/consol_act/pfma1999206/.

³ Lists of these instruments can be found at http://ocpo.treasury.gov.za/Buyers_Area/Legislation/Pages/default.aspx.

⁴ The MFMA can be found at <http://www.lawsofsouthafrica.up.ac.za/index.php/current-legislation>.

⁵ The Regulations can be found at http://www.saflii.org/za/legis/consol_reg/mscmr435/.

⁶ MFMA section 168(3).

⁷ The Act can be found at <http://www.lawsofsouthafrica.up.ac.za/index.php/current-legislation>.

Regulations, 2022,⁸ made under it. These enactments provide for the adjudication method in formal quotation and open bidding procurement. Importantly, this includes the system of broad-based black economic empowerment (B-BBEE) in public procurement, which allows for preferential procurement from certain categories of bidders. The rules under the PPPFA apply alongside those under the PFMA and the MFMA.

Sectoral procurement rules

In addition to the general procurement rules set out in the abovementioned instruments, further rules govern particular types of procurement. The most important is the regulatory regime for construction procurement. While construction procurement is governed by general procurement law, it is additionally governed by rules created under the Construction Industry Development Board Act, 38 of 2000 (CIDB). Most recently, National Treasury has also adopted a set of rules specifically for construction procurement under the PFMA in the form of the Framework for Infrastructure Delivery and Procurement Management 2019. The latter, however, only applies to national and provincial entities and not local government construction procurement. Further sectoral procurement rules, which apply to procurement within the particular sector in addition to general procurement law, include procurement of land transport, governed under the National Land Transport Act, 5 of 2009 and the National Land Transport Regulations on Contracting for Public Transport Services, 2009,⁹ and procurement of information technology, governed by the State Information Technology Agency Act, 88 of 1998 and the Regulations made under that Act.¹⁰

Procurement methods

The procurement rules set out above allow for three basic procurement methods:

- petty cash purchases for low value transactions
- restricted bidding by way of quotations
- open bidding.

⁸ The Regulations can be accessed at <https://www.treasury.gov.za/legislation/regulations/PREFERENTIAL%20PROCUREMENT%20REGULATIONS,%202022.pdf>.

⁹ Both the Act and the Regulations can be found at <http://www.lawsofsouthafrica.up.ac.za/index.php/current-legislation>.

¹⁰ Both the Act and the Regulations can be found at <http://www.lawsofsouthafrica.up.ac.za/index.php/current-legislation>.

Use of these basic methods is largely determined by the value of the transaction based on set thresholds.¹¹ At present, the informal, petty cash method is prescribed for all transactions below R2 000 for local government entities and national and provincial entities covered by the PFMA Treasury Regulations. Restricted bidding by way of quotations must be used for all transactions above R2 000 and below R1-million by national and provincial entities subject to the Treasury Regulations and below R200 000 by local government entities. National and provincial entities subject to the Treasury Regulations must use the open bidding procedure for transactions above R1-million and local government entities must use open bidding for all transactions above R200 000.

The restricted bidding procedure requires entities to invite quotations from at least three suppliers that are registered on a supplier database, with the exact number of quotations that must be obtained set out in the entity's SCM Policy.¹² In the case of national and provincial entities, that list is the national central supplier database (CSD) maintained by National Treasury.¹³ Local government entities may use the CSD or their own list of suppliers. While entities should endeavour to obtain as many quotations as possible for larger value procurements within this category, there are no legal prescripts regarding how suppliers should be invited to submit quotations. The method of selection must be set out in the entity's SCM Policy.

The most important procurement method is the open bidding procedure. In terms of this procedure, entities are obliged to publish an open invitation to submit bids in prescribed form by a prescribed closing date.¹⁴ All bids received must be considered by a bid evaluation committee (BEC) to determine whether they are responsive, that is, compliant with all the bid requirements.¹⁵ The BEC makes a recommendation to the bid adjudication committee (BAC) regarding which bids are responsive, including whether they meet the technical specifications of the particular tender (often called the functionality criteria).¹⁶ The BAC scores the qualifying bidders on the basis of the price offered and what is called preference points.¹⁷

¹¹ National Treasury PFMA SCM Instruction No. 02 of 2021/22; Municipal SCM Regulations 16–18.

¹² National Treasury PFMA SCM Instruction No. 02 of 2021/22; Municipal SCM Regulations 16–17.

¹³ National Treasury PFMA SCM Instruction No. 02 of 2021/22; National Treasury SCM Instruction No. 4A of 2016/2017.

¹⁴ Treasury Regulations 16A6; Municipal SCM Regulations 22.

¹⁵ Treasury Regulations 16A6; Municipal SCM Regulations 26, 28; read with the PPPFA section 1.

¹⁶ Treasury Regulations 16A6; Municipal SCM Regulations 28.

¹⁷ Preferential Procurement Regulations 4, 5.

All procurements above the value of R2 000, whether done by means of quotations or open bidding, must be adjudicated in terms of the scoring method set out in the PPPFA and Preferential Procurement Regulations, 2022.

The scoring is done on set formulae out of 100 points. For procurements below the value of R50-million, 80 points are awarded for price and 20 points for preference. For procurements above R50-million, 90 points are awarded for price and 10 for preference. The price points are determined by the following formulae (depending on whether the 80/20 or 90/10 ratio is used):

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

$$P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where –

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{\min} = Price of lowest acceptable tender.

For procurement in so-called income-generating contracts, that is where the organ of state is deriving income from the contract rather than expending money, the following formulae must be used:

$$P_s = 80 \left(1 + \frac{P_t - P_{\max}}{P_{\max}} \right)$$

$$P_s = 90 \left(1 + \frac{P_t - P_{\max}}{P_{\max}} \right)$$

Where –

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{\max} = Price of highest acceptable tender.

The preference points are added to the price points for each bidder. The calculation of the preference points must be determined by the Preferential Procurement Policy of each organ of state and points may be awarded for specific goals which “may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994”.¹⁸

Once the BAC has determined the individual scores of all qualifying bidders, it is under a general legal duty to award the bid to the highest scoring bidder.¹⁹ There are some exceptions to this rule, where the entity may, at the outset in the tender invitation, indicate that other objective criteria may also be used in combination with the scoring to determine the winning bidder.²⁰



¹⁸ PPPFA section 2(1)(d).

¹⁹ PPPFA section 2(1)(f).

²⁰ PPPFA section 2(1)(f).

3 About deviations

Public entities are allowed to deviate from the procurement procedures set out above under limited circumstances. Under the PFMA Treasury Regulations, national and provincial entities covered by those regulations may deviate when “it is impractical to invite competitive bids”.²¹ Entities must set out in their SCM Policies the circumstances under which such deviation would be allowed as well as the alternative procurement procedure that must be followed in such deviation.²² In all cases, the accounting officer or accounting authority must approve the reasons for the deviation.²³ All deviations must be reported to the relevant treasury (the relevant provincial treasury in the case of provincial entities and National Treasury in the case of all other entities) and the Auditor-General within 14 days of finalisation of the procurement.²⁴

In terms of the Municipal SCM Regulations, local government entities may deviate from prescribed procurement procedures in a number of specified circumstances, including emergencies and where there is only one supplier that can provide the required goods or services, as well as “any other exceptional case where it is impractical or impossible to follow the official procurement processes”.²⁵ Deviations must be reported to the local council.

When the conditions for a deviation are met, the entity may procure by way of any appropriate procedure, including direct contracting, as set out in its SCM Policy. A deviation is accordingly the only way public entities may contract directly with suppliers. When an entity deviates from the prescribed procurement procedures in terms of the rules set out above, it still complies with procurement law.

In other words, an entity deviating from the prescribed procedures does not in itself mean something is wrong with the procurement. Deviations are, however, the exception. It follows that they should only be used in exceptional cases where it is truly unfeasible to adhere to normal procurement rules. An entity relying heavily on deviations in its procurement function may raise a red flag. It may signal abuse of the procurement system or that procurement planning is weak within the entity.

²¹ Treasury Regulations 16A6.4.

²² National Treasury PFMA SCM Instruction No 03 of 2021/22.

²³ National Treasury PFMA SCM Instruction No 03 of 2021/22.

²⁴ National Treasury PFMA SCM Instruction No 03 of 2021/22.

²⁵ Municipal SCM Regulations 36(1)(a)(v).

4 About expansions

As a rule, the contract concluded and implemented following the tender process should in all material respects reflect the terms and conditions upon which bids were invited and adjudicated. That is, an entity should not invite bids, adjudicate them, and award the tender to a supplier and subsequently conclude a contract with that supplier on materially different terms. Similarly, an entity should not, after the contract conclusion, allow material changes to the contract terms as doing so would mean the procurement process is no longer fair.

It is, however, inevitable that contracts need to be adjusted from time to time. Unexpected conditions may emerge during contract execution that necessitate contract adjustment. For example, a department may procure bottles of water for an event it is planning and discover at the last minute (unexpectedly) that more attendees will be at the event than it planned for. Under such circumstances, the department may wish to adjust the quantity of bottles to be supplied.

The risks accompanying contract variations are paramount in the case of expansions of contracts. That is, instances where the value of the contract is increased. Such expansions may easily be abused to award a much bigger contract to the supplier than was originally tendered for. The expanded contract will thus not be the product of competitive bidding.

It is for this reason that National Treasury has issued an instruction to all national and provincial entities (not only those covered by the Treasury Regulations) under the PFMA to monitor contract expansions.²⁶ In terms of this instruction, an entity must report monthly to the relevant treasury as well as the Auditor-General any contract variation beyond 20% or R20-million (including VAT, whichever is the lesser) for construction-related procurement, and any variation beyond 15% or R15-million (including VAT, whichever is the lesser) for all other procurements. The report must include the reasons for the expansion.

At local government level, amendments of contracts are procedurally more restricted. Under the MFMA, a municipality may only amend a contract after “the reasons for the proposed amendment have been tabled in the council” and “the local community has been given reasonable notice of the intention to amend ... and has been invited to submit representations” on such proposed amendment.²⁷

²⁶ National Treasury PFMA SCM Instruction No 03 of 2021/22.

²⁷ MFMA section 116.

5 Contraventions and remedies

Abuse of the procurement system amounts to offences under different statutes, under which a range of penalties may be imposed.

Procurement-specific offences

The Prevention and Combating of Corrupt Activities Act, 12 of 2004 (Precca)²⁸ creates two procurement-specific offences.

- The first relates to “corrupt activities in relation to contracts” and in terms of section 12 includes situations where a person accepts or agrees to accept, offers or agrees to offer, or gives any gratification, for his/her benefit or the benefit of another person to influence in any way the promotion, execution, or procurement of a contract with a public entity. This offence is primarily aimed at bribery.
- The second offence is “corrupt activities in the procuring and withdrawal of tenders”. In terms of section 13, this offence involves instances where a person offers, agrees to offer or to accept, or accepts any gratification as an inducement to or to influence another person to award a tender, make a tender, or withdraw a tender for a contract.

The Act provides for the specific sanction of debarment in addition to the general sanctions of fines and imprisonment in cases of conviction for these offences. Debarment is considered in the following section.

Collusion

Collusion between an official and supplier to ensure the awarding of a contract to the supplier, whether it amounts to an offence under Precca or only more generally contravention of procurement laws, may also amount to an offence under the Prevention of Organised Crime Act 121 of 1998 (POCA).²⁹ Such collusion may, for example, amount to money laundering under section 4; to “assisting another to benefit from proceeds of unlawful activities”, which is an offence in terms of section 5, or “acquisition, possession or use of proceeds of unlawful activities”, an offence in terms of section 6.

It is important to note that the unlawful activities that would trigger these offences do not have to be offences (i.e., crimes) themselves. POCA defines “unlawful activities” to include

²⁸ The Act can be found at <http://www.lawsouthafrica.up.ac.za/index.php/current-legislation>.

²⁹ The Act can be found at <http://www.lawsouthafrica.up.ac.za/index.php/current-legislation>.

“any conduct...which contravenes any law”. It thus follows that procurement decisions that do not adhere to procurement laws may constitute such unlawful activities. POCA prescribes fines to a maximum of R100-million or imprisonment to a maximum of 30 years for these offences.

Remedies

Procurement law itself also provides for remedies in case of abuse of the procurement system. The Preferential Procurement Regulations, 2022, under the PPPFA, provide for sanctions where a bidder has submitted false information to secure the tender. The sanctions that may be imposed under these Regulations include disqualifying the bidder from the tender process, cancelling a contract, and claiming damages. Similar remedies are provided for under the Treasury Regulations and instructions issued under the PFMA. These provide for bids to be rejected or contracts to be cancelled where corruption or fraud in the procurement process occurred, as well as for bidders to be debarred (discussed below). The Municipal SCM Regulations provide that municipal SCM Policies must contain similar mechanisms.

Finally, various collusive practices among suppliers may also amount to violations of the Competition Act 89 of 1998,³⁰ especially where such practices have the effect of lessening competition in the public procurement market. This includes price fixing or dividing contract opportunities among competing bidders. Fines may be imposed on such colluding bidders.

6 Debarment of suppliers

There are two mechanisms in South African law for restricting suppliers from doing business with government. Generally, this is referred to as debarment.

Register for Tender Defaulters

One mechanism is created in Precca and given further detail in regulations issued under the Act.³¹ As part of the criminal sanction a court may impose following a finding of guilt in respect of procurement-specific offences under this Act, the court may order that the supplier and a host of related parties (as determined by the court) be listed on the Register for Tender Defaulters. When an entity has been endorsed on the Register, it will be debarred from winning state contracts for a period of between 5 and 10 years. The term of debarment is set

³⁰ The Act can be found at <http://www.lawsofsouthafrica.up.ac.za/index.php/current-legislation>.

³¹ The Regulations Regarding the Register for Tender Defaulters, 2005, made under PRECCA can be found at <http://www.lawsofsouthafrica.up.ac.za/index.php/current-legislation>.

by National Treasury once the court has ordered endorsement. The Register for Tender Defaulters is publicly available.³² An organ of state is prohibited from awarding a contract to an entity endorsed on the Register.

Database of Restricted Suppliers maintained by National Treasury

The second debarment mechanism in South Africa is the Database of Restricted Suppliers that is also maintained by National Treasury.³³ Listing on this database is done administratively, that is, without a court order. In terms of the PFMA and MFMA organs of state may identify a supplier for inclusion on the database for a host of reasons. When a supplier is listed, it will be debarred from winning state contracts for the period of listing, which may not exceed 10 years, and organs of state are prohibited from awarding contracts to such suppliers.

The reasons for listing are varied. They include abuse of the SCM system, such as fraud in winning the bid, corruption more generally, or failure to perform under a contract. The relevant procuring organ of state decides whether a supplier must be listed on the database and informs National Treasury accordingly.



³² See <http://www.treasury.gov.za/publications/other/Register%20for%20Tender%20Defaulters.pdf>.

³³ See <http://ocpo.treasury.gov.za/RestrictedSupplier/RestrictedSuppliersReport.pdf>.

7 Deviations data

Reported deviations 2016–2023

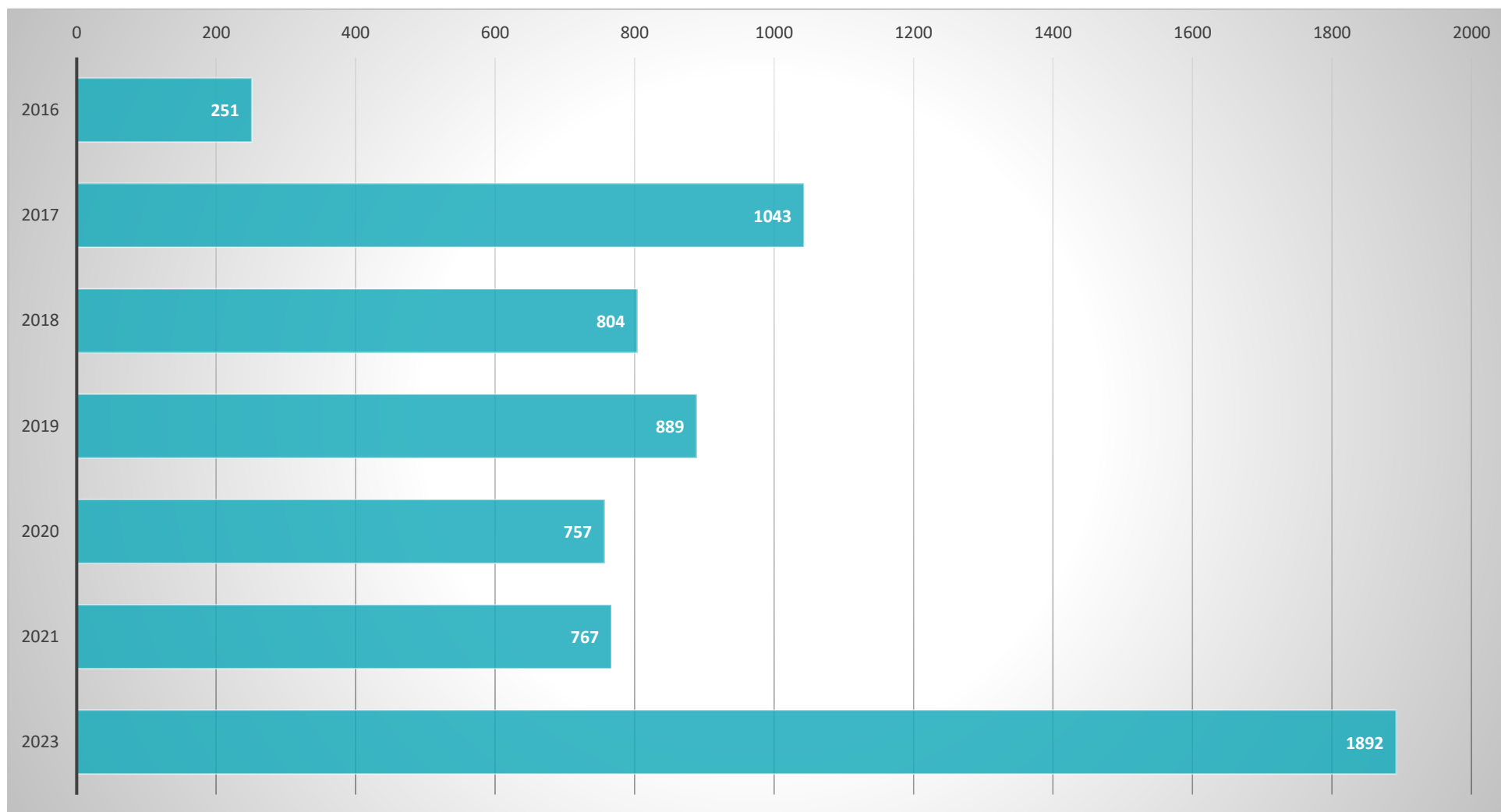
The graph below illustrates the number of deviations from prescribed procurement procedures reported by provincial and national organs of state to National Treasury from 2016 to the fourth quarter of the 2022/23 financial year.³⁴ The most significant observation regarding the deviation data of the 2022/23 financial year is the material increase in the number of reported deviations in 2022/23. The data show a massive increase of 247% from 2021/22 to 2022/23. Against the backdrop of generally decreasing deviation numbers since 2017, the massive increase in deviation numbers in 2022/23 is a cause for serious concern. It must be noted, however, that this analysis is purely based on reported data. The increase in the deviation numbers may reflect increased reporting of deviations rather than an actual increase in deviations.

While the number of reported deviations increased dramatically between 2021/22 and 2022/23, the value of deviations interestingly declined significantly. These values are based on the reported value of deviations, bearing in mind that in a notable number of instances the value of the deviation was not reported. The total reported value of procurement via deviations in 2021 was around R34-billion. In 2022, the value of procurement via deviations was around R28-billion. In the 2022/23 financial year, however, the total reported value of procurement via deviations declined to around R11.9-billion. Thus, while the total number of reported deviations more than doubled from 2021 to 2023, the value of such deviations declined by two-thirds. It is not clear that this represents a trend.

In 2021, the top five reported deviations by value accounted for close to R13-billion of the total R34-billion reported deviations and the top 20 reported deviations accounted for R17-billion, i.e. half the total value of all 767 deviations. It is thus evident that a small number of high-value deviations greatly impacted on the total value rather than an average high value across all deviations. One observes that in the 2022/23 financial year there was a much higher number of small-value deviations reported. If the difference does not reflect a shift in reporting compliance, this difference suggests that deviations have become much more prevalent as a mode of procurement in ordinary operations as opposed to a way of dealing with specific and a limited number of exceptional instances of procurement, including high-value once-off scenarios. If this is indeed the case, the increase in deviation numbers suggests that the mainstream procurement system is no longer fit for purpose.

³⁴ The financial year runs from 1 April to 31 March.

Figure 1: Deviations reported per year (2016 – 2023)



10 largest deviations by transaction value in the 2022/2023 financial year

Table 3 below sets out the 10 largest deviations from prescribed procurement procedures in transaction value in the 2022/2023 financial year based on reported deviation amounts. The trend identified in the first and second Corruption Watch reports on procurement risk trends (2021 and 2022) regarding deviations involving inter-organ of state contracting continues to be evident in table 3. Four of the top 10 deviations in 2022/2023 involved an organ of state as supplier, including the top deviation by value at R2.5=billion. This trend raises important questions about the suitability of general public procurement rules for inter-organ of state contracting.



Table 1: 10 largest deviations per value of deviation requested (2022/2023)

Entity/Department	Project description	Supplier(s)	Value of deviation	Reason for deviation	Info source
Department of Communications and Digital Technologies	Repurpose the balance of 2021/22 SA Connect Phase 1 funds for Phase 2 of SA Connect	BBI and Sentech	R 2 500 000 000.00	Preferred supplier	Q1_2022/3
National Health Laboratory Service (NHLS)	Reagents and related consumables for covid 19 testing	Various	R 1 040 000 000.00	Sole Supplier and Emergency	Q2_2022/3
African Exploration Mining and Finance Corporation SOC Ltd (AEMFC)	Sourcing of Higher-Grade Coal for Quality Management to service Eskom Supply Agreement - Majuba for period of 24 months	Namane Commodities	R 1 000 000 000.00	Rectification Plan for Eskom Coal Agreement	Q3_2022/3
State Information Technology Agency	Request for a single source appointment of Telkom for all existing Telkom lines connecting various government departments (R504,301,878.94) for 18 months period	Telkom SA SOC Ltd	R 504 301 878.94	Due to the time that has taken to perform internal these processes, it also took time for Telkom to provide comprehensive proposal due to many sites they needed to visit to finalise their service offerings	Q3_2022/3
Transnet SOC Ltd	Response for provision of multifunctional devices (MFDs)	Business Connexion	R 462 000 000.00	Poor Planning	Q2_2022/3
South African Police Service (SAPS)	Voice and Data services	Telkom SA	R 360 000 000.00	Preferred Supplier	Q4_2022/3
The South African National Roads Agency SOC Ltd (SANRAL)	Emergency repairs of road embankments failure to N2, Section 24, 0KM -12KM	Stefanutti Stocks (Pty) Ltd	R 352 680 879.10	Emergency	Q4_2022/3
Transnet SOC Ltd	KZN national state of emergency procurement for repairs and restoration	Multiple suppliers	R 282 863 445.46	Procurement by other means	Q4_2022/3
National Health Laboratory Service (NHLS)	GeneXpert XPRSARS-COV-2 tests	Cepheid	R 217 242 000.00	Sole supplier	Q2_2022/3
Government Communication & Information System	Presidential Employment Stimulus (PES) Broadband Access Fund	Broadband Infracore (BBI)	R 200 000 000.00	Single source	Q4_2022/3

Highest number of deviations by entity in 2022/2023

The highest number of deviations reported in 2022/2023 was by the Council for Scientific and Industrial Research (CSIR), with a total of 200 reported deviations. This is not surprising given the highly technical nature of goods and services typically procured by the CSIR and other research entities. In the vast majority of these instances (all but one), the reason for the deviation is given as sole source, meaning that the particular goods or services are only available from one supplier, which, as noted in section 3 above, is a perfectly acceptable justification for deviating from open bidding. The same trend can be observed in relation to other research entities on the list of deviations for 2022/2023.

Of interest is the relatively small number of government departments reporting deviations compared to non-department organs of state. Of the 131 entities that reported deviations in 2022/2023, only 24 (18%) were departments, while departments constitute approximately 45% of all public entities covered by the PFMA.

The most common reasons for deviations during 2022/2023 were emergency and sole provider.

8 Contract expansions data

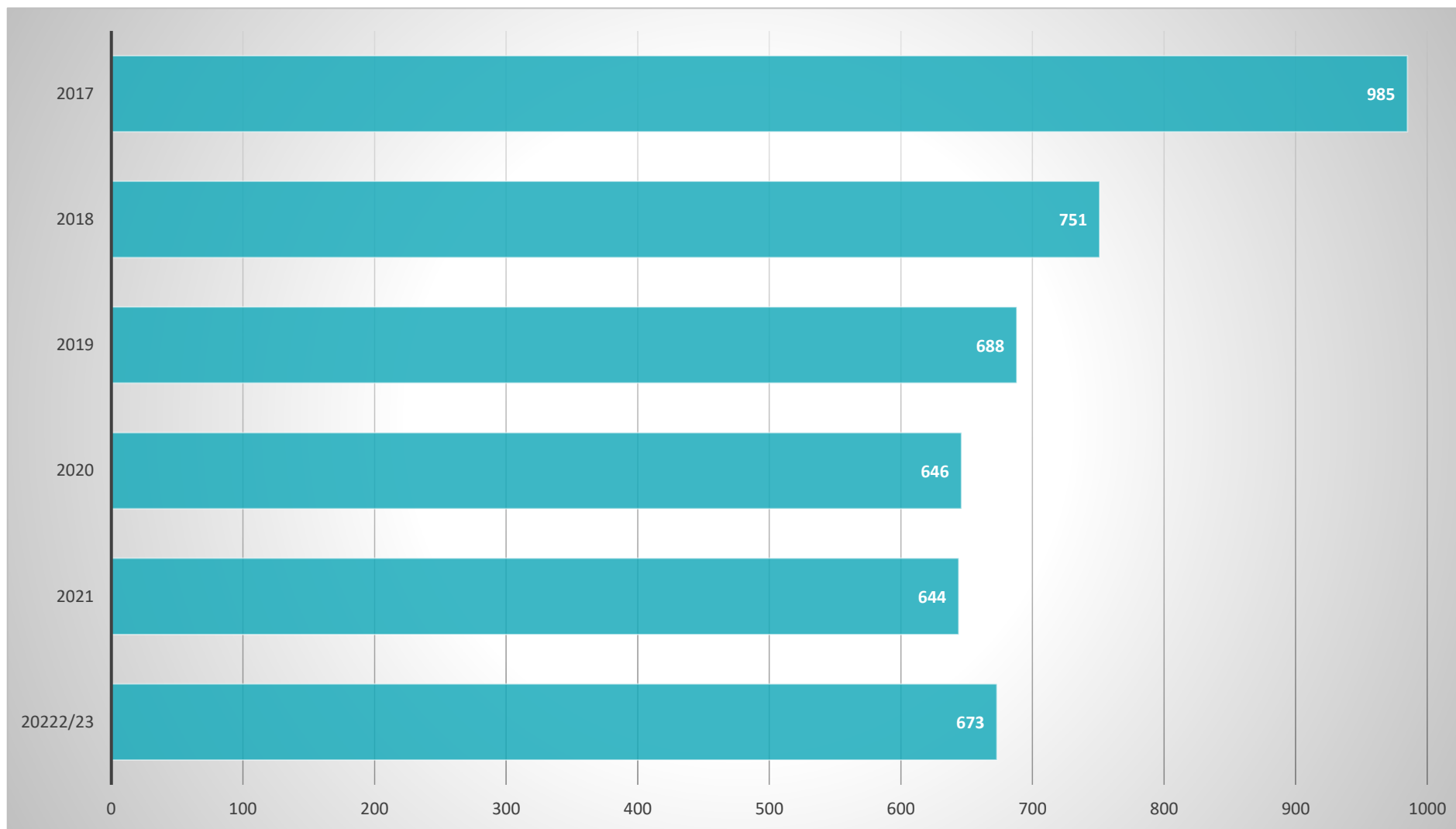
Contract expansions reported to National Treasury 2017–2023

Figure 2 below shows the number of contract expansions by national and provincial entities reported to the National Treasury between 2017 and 2023. While reported expansions have steadily declined since 2017, the data for the 2022/2023 financial year shows a slowing down of the decline and a very slight increase in reported expansions. On current data, it seems that the number of reported expansions has seemingly stabilised since 2019 around the 650 to 700 mark.

The total value of contract expansions in 2022/2023 exceeded R157-billion. This is based on the reported value of expansions, bearing in mind that in a notable number of instances (58) the value of the expansion was not reported. This value is almost double the total reported value of expansions in 2021 even though the number of reported expansions in 2022/2023 (673) was only slightly more than in 2021/22 (644). The implication is that the extent of expansions was much higher in 2022/2023 than previously. In fact, when compared to the original contract values to which the reported expansions relate, the overall percentage of expansion stood at 97%. Put differently, this means that on average these contracts were almost doubled in value based on expansions.

There can be little doubt that a procurement contract that is doubled in terms of value after award is materially different in terms from the contract awarded by way of the procurement process. As with deviations, however, there is significant variance in the percentage increases through expansions between the 673 cases. These range from a 120 000% increase (from an original contract value of R15 000 to R18-million) to a 1% increase.

Figure 2: Number of contract expansions reported per year (2017 – 2023)



10 largest contract expansions (2022/2023)

Table 5 shows the 10 largest contract expansions, by value, reported to National Treasury in 2022/2023. The dominance of Eskom on this list is self-evident, as was also the case in the 2021 report.

Table 2: 10 largest contract expansions by value of expansion (2022/2023)

Entity/ Department	Project description	Supplier	Reason for expansion	Value of contract expansion	Original contract value	Percent extension increase
Eskom Holdings SOC Ltd	Boiler Contract for Medupi Power Station	Mitsubishi Hitachi Power Systems	Procurement by other means - time extension	R 19 913 189 751.00	Not stated	
Eskom Holdings SOC Ltd	Continuous Ash Disposal Facility (ADF) Project Package 1 (Civils) at Kendal Power Station	Concor Lubocon ADF Joint Venture, a Division of Concor Holdings (Pty) Ltd	Procurement by other means	R 16 288 527 717.00	R 52 730 412 559.00	31%
Eskom Holdings SOC Ltd	Modification report for Kusile Subcontractor	Mecopol	Procurement by other means	R 10 871 801 783.00	R 2 169 624 888.00	501%
Eskom Holdings SOC Ltd	Modification report for physical security at ERI	Kya Guards	Procurement by other means	R 8 952 472 857.00	R 1 000 000 000.00	895%
Eskom Holdings SOC Ltd	The design, manufacture, assembly and integration, testing, quality assurance, delivery to site or stores, off-loading, erection, commissioning and de-commissioning of switchmode chargers ...	Com10 a division of Actom (Pty) Ltd	Procurement by other means	R 8 880 835 694.00	R 2 806 355 731.00	316%
South African Social Security Agency (SASSA)	Extension of the current co-sourcing of the beneficiary records management contract between SASSA and The Document Warehouse	The Document Warehouse	Preferred bidder	R 7 882 924 812.00	Not stated	
Department of Water and Sanitation (DWS)	Security guarding services for DWS nationally for a period of	Khayalami Security	SSA still vetting the service providers for the finalisation of new contracts	R 5 571 216 535.00	R 534 743 288.00	1042%

	2 months around Limpopo Province					
Eskom Holdings SOC Ltd	Acquisition of Sulphuric Acid	AECI	Procurement by other means	R 5 394 518 213.00	R 4 969 571 222.00	109%
South African Revenue Service	Veale Building Lease Extention	Growthpoint Properties Ltd	Contract extension between SARS and Growthpoint Properties Ltd, in respect of the leasing out of their premises at Veale Street, Landbank building in Brooklyn for a period of ...	R 5 288 264 711.00	R 4 421 058 170.00	120%
Road Accident Fund (RAF)	Datacentre Hosting Services	Vodacom (Pty) Ltd	Continuity of services	R 5 034 594 634.00	R 4 234 070 024.00	119%

9 Debarred supplier data

Of the two restricted suppliers lists, the Register for Tender Defaulters and the Database of Restricted Suppliers, there are currently only listings on the latter. The Register for Tender Defaulters contains no current listings. Figure 3 shows the organs of state that have submitted names of suppliers to be included on the Database for Restricted Suppliers and that are currently still restricted. It also includes the number of names submitted by each entity.

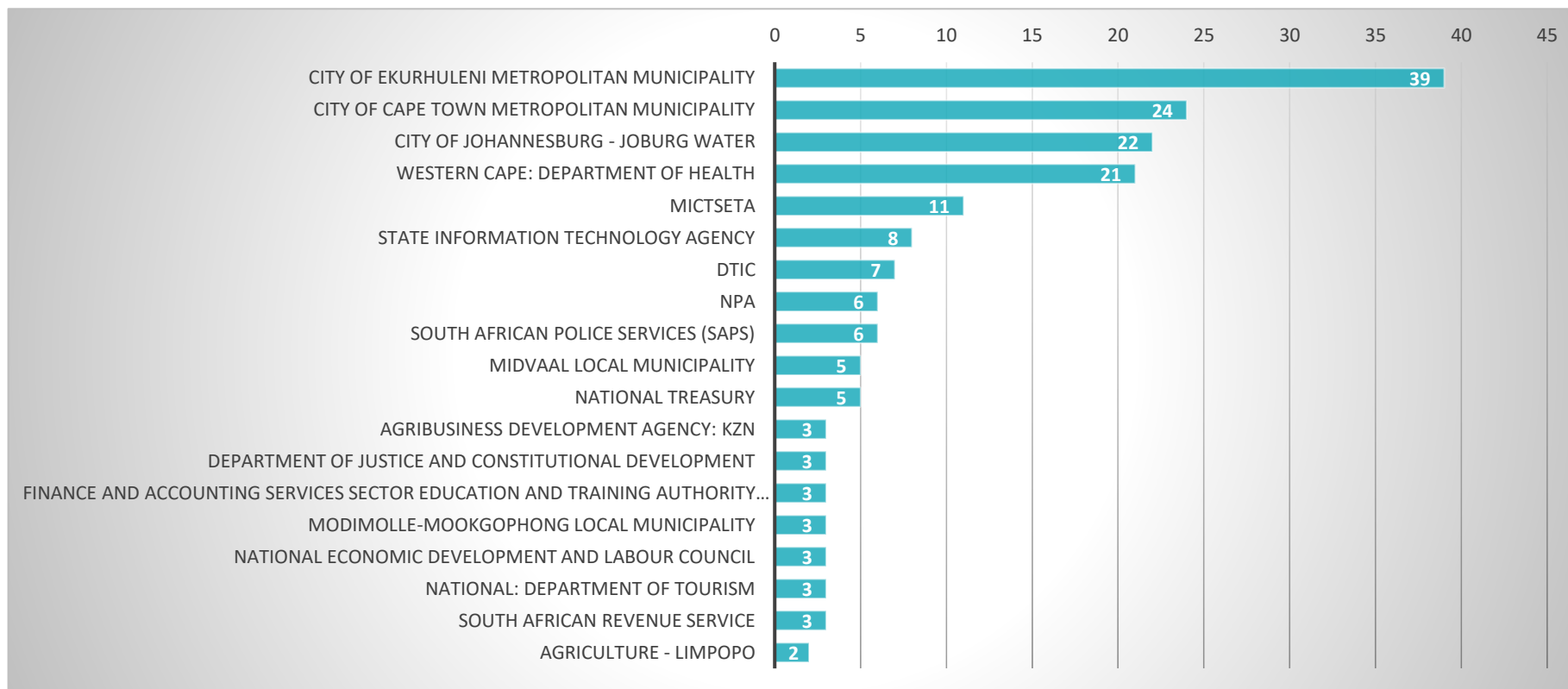


Figure 3: Number of suppliers currently restricted per organ of state on the Database of Restricted Suppliers

Of particular interest is the small number of public entities (19) that have submitted names to this list, bearing in mind that there are around 40 national departments, 103 provincial departments, 278 municipalities, nine constitutional institutions, and 154 other public entities listed in schedule 3 of the PFMA – that is at least 584 entities procuring under rules that include debarment on this list (not counting subsidiaries and municipal entities). The number of public entities that have listed suppliers on the list has also significantly decreased since 2021. The second Corruption Watch report on procurement risk trends reported that 34 public entities had listed suppliers on the database.

However, while the number of public entities has declined, the number of listings have significantly increased since 2021. From the beginning of 2022 to date, 99 suppliers have been listed, with the bulk having been listed during 2023, 80 in total. This represents a 1 600% increase since 2021. Clearly there is a sharp increase in the use of this debarment mechanism even though only a very few public entities are doing so.

The analysis in Table 3 shows the reasons for restricting suppliers from doing business with the state, grouped under broad categories.

Table 3: Reasons for restricting suppliers

Reason category	Reason listed by debarring entity	Percentage of total debarments
Fraud and misrepresentation	Submission of Fraudulent Invoices for good never received by the department	32%
	Misrepresentation of information	11%
	Fraud and Corruption	10%
	Non - Declaration of Interest	6%
	Fraudulent B-BBEE Certificate	5%
	Fraud and conflict of interest	5%
	Submission of Fraudulent Health Certificate	3%
	Fronting and/or cover quoting	2%
Performance problems	Non-performance	8%
	Non-delivery	3%
	Non- and Poor performance	2%
	Failed to deliver as per the contractual obligations	2%
	Poor performance	1%
Other general (unspecified)	Unethical behaviour	4%
	Failure to return undue payment	3%
	Impropriety	2%
	Non-performance and Fraud	2%

The reasons given are as indicated by the relevant listing entity. As is evident from the list, there is a fair level of overlap among different listings, e.g., “Non-performance” (8%), “Poor performance” (1%), “Failed to deliver as per contractual obligations” (2%), “Non- and Poor performance” (2%); “Non-delivery” (3%); “Non and Poor Performance” (2%). The same applies to various forms of fraud.

The reasons for listing also clearly indicate that not all listings on the database relate to fraud or corruption; some relate purely to performance.



10 Methodology

All data was extracted from quarterly procurement reports submitted to National Treasury. These can be accessed at the following links.

The deviations and expansions reports can be obtained here:

http://ocpo.treasury.gov.za/Suppliers_Area/Pages/Deviations-and-Expansions.aspx. The data reported here were abstracted from these submitted reports.

The Database on Restricted Suppliers can be accessed here:

<http://www.treasury.gov.za/publications/other/Database%20of%20Restricted%20Suppliers.pdf>

The Register for Tender Defaulters can be accessed here:

<http://www.treasury.gov.za/publications/other/Register%20for%20Tender%20Defaulters.pdf>.

Data is reported in terms of the financial year under the PFMA, which runs from 1 April to 31 March. Quarterly data thus refers to the quarters of that financial year.

11 Conclusion

Corruption Watch's online tool, Procurement Watch, enables one to identify patterns and trends in public procurement practice in South Africa. It focuses on the high-risk areas of deviations from prescribed procurement procedures and variations of contracts during implementation.

Data on these two features of procurement can serve as red flags of failures in supply chain management. Neither of these, however, necessarily imply abuse of the supply chain management system. There may be valid reasons for deviating from the prescribed procurement procedure (e.g. in the case of emergency) or for varying a contract during implementation (e.g. when conditions unexpectedly change).

Data on these features thus serve as points of departure for further analysis. Such analysis is greatly enhanced by the aggregation of data in the Procurement Watch tool and its functionality to access the data along different variables, such as value, procuring entity and time.



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