

Content analysis and ranking of irregularities in public sector construction procurement in South Africa

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ABSTRACT

In the South African government sector, public procurement is a strategic mechanism through which the government could be able to achieve the mandatory socioeconomic objectives. To this extent, the government procures goods and services from the private sector which can be estimated around eight hundred billion rand annually. Although there are numerous policy frameworks and systems to ensure that the management of the public procurement processes are fair, equitable, transparent, and cost-effective; the public procurement management practice, particularly in the delivery of construction goods and services, remains vulnerable to mismanagement and irregularities. To this extent, the nature of the irregularities and the stages at which they occur in the public procurement system remains unclear. To address this gap of knowledge, a content analysis method and the associated techniques of in-Vivo coding and word frequency analysis were used for the analysis of the secondary data. The study revealed that poor and or non-performance were the most frequent irregularities in the procurement of public construction services. The principal theoretical implication of this study is that rigorous proficiency measures should be applied to scrutinize and evaluate the potential of the contractors in terms of capacity to deliver in accordance with the contractual agreements prior to the awarding of contracts.

KEYWORDS: Construction; Irregularities; Procurement; Project Management; Republic of South Africa.

INTRODUCTION

Public procurement is a viable alternative for service delivery towards the realization of the developmental needs in several democratic governments in Africa (Ambe & Badenhorst-Weiss, 2012; Dzuke & Naude, 2017; Mahamadu *et al.*, 2015). In the context of the South African government, public procurement is a strategic mechanism through which the government seeks to achieve the socioeconomic objectives as outlined in the country's Constitution (Ambe, 2016; Fourie, 2015). The government identifies public sector procurement as an economic policy for bridging the disparities between the first and secondary economy created by the apartheid dispensation (Fourie, 2015). To date, the government procures goods and services from the private sector which can be estimated around R800 billion per year (Mahlaka, 2018). Public sector procurement has a very significant impact to the country's economy (Watermeyer, 2013; Watermeyer, 2000). To this extent, several policy frameworks have been introduced to ensure good governance in the implementation of the public sector procurement. The primary objective of the policy

frameworks is to ensure that the management of the public procurement processes are fair, equitable, transparent, and cost-effective (Ambe, 2016; Dzuke & Naude, 2017; Emuze, Klaas & Smallwood, 2013; Watermeyer, 2013). Ironically to the good governance principle, the public sector procurement is increasingly being associated with mismanagement and irregularities (Bolton, 2006; Eyaa & Oluka, 2011; Islam *et al.*, 2017) and is defined as an inseparable twin with corruption (Munzhedzi, 2016). In this context, flawed procurement deals are estimated to be costing the country R400 billion per year (Mahlaka, 2018). Contrary to other sectors, the construction industry with its embedded administrative complexities, massive financial volumes and the involvement of a large number of stakeholders (Nordin, Takim & Nawawi, 2013), the public sector construction procurement is most plagued with irregularities (Adnan *et al.*, 2012). Of particular concern is that despite the growing concern about the irregularities in the public procurement, particular in construction, the nature of the irregularities and the extent thereof in entire public procurement system, remains unclear. Against this backdrop, this study seeks to address the fundamental question of; what is the nature of the irregularities in construction public procurement? and at which stage of the public procurement cycle do these irregularities occur? To fill this knowledge gap, a secondary data is used as a methodology to identify and illustrate the nature together with the extent of the irregularities in the public sector construction procurement in the context of South Africa. The overview structure of this paper consists of the following sections: conceptual framework, methodology, findings discussion, and conclusion and recommendations.

CONCEPTUALIZING PUBLIC PROCUREMENT

The Construction Industry Development Board (CIDB) (2007) defines public procurement as the process that creates, manages, and fulfils contracts in public administration. Moreover, procurement as such forms an integral part of construction projects and occurs at any point in a project cycle where external resources are required to provide supplies and services in any combination or in the disposal of surplus plant, equipment and materials and the demolition of redundant buildings and infrastructure (CIDB, 2007). Sherman (1991) in Ambe (2016) defines public procurement as “a business function charged with and qualifying external sources, forming agreements, and administering them so that material and services that enhance the work of the organization are reliably delivered”. For Patraş (2016, p25), public procurement is governed by a set of principles which includes transparency, non-discrimination, and fair competition. On the same note, Ambe (2016, p278) maintains that reliable public procurement practices seek to ensure that funds are used for, among others, the construction of public infrastructure and facilities which intend to benefit the general public. Therefore, public procurement involves interactive processes and relations between the public and private sector towards the delivery of the public goods and services. As indicated by Burke (2010), the procurement management is the process of acquiring the goods and services from contractors and suppliers outside of the project organization. This may include for example the acquisition of drawings, material, equipment, or professional service required to perform and complete the project scope of work (Burke, 2010). In this context, the author views the procurement management as a linear process which begins with the procurement planning stage and ends with the accounts’ administration stage. On the same note, Patraş (2016, p47) describes the procurement management system “as a process flow starting with procurement planning and proceeding in sequence to product design, advertising, invitation to bid, prequalification, bid evaluation, post-qualification, contract award and contract

implementation”. The Organisation for Economic Co-operation and Development (OECD) (2016) clusters the public procurement processes into three phases, namely, pre-tendering phase; tendering phase; and post-tendering phase (Figure 1). While it is generally acknowledged that procurement is a process that can be standardised, Watermeyer (2013) strongly maintains that the starting point in the development of any procurement system is to determine the objectives for the system. In the context of developing countries, Watermeyer (2013) identify two principal objectives associated with procurement systems. Firstly, is to ensure good governance; and secondly, to promote social and national agendas.

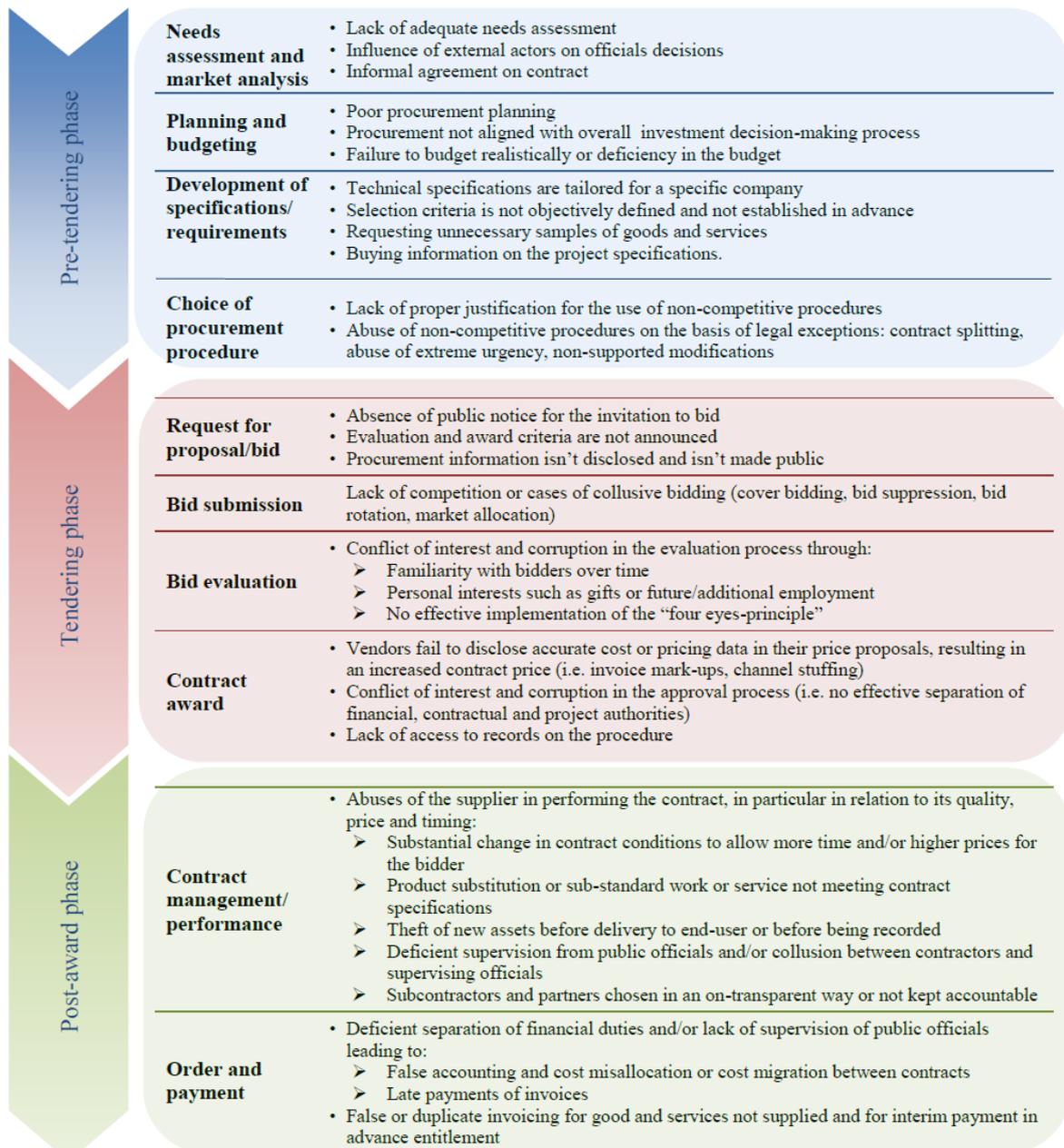


Figure 1: A myriad of irregularities along the public procurement cycle (Source: OECD, 2016)

Remarkable, irregularities occur in every stage of the procurement process, from the needs' assessment over the bidding phase to the contract execution and payment (Figure 1). Though

the nature of the irregularities may differ for each step and phase (Laryea & Hughes, 2011; OECD, 2016), the nature of the irregularities and the stages at which the irregularities occur in the public sector construction procurement system remains unclear, particular in the South African context. In essence, the public sector construction procurement, particular in developing countries, continues to be associated with various challenges.

BOTTLENECKS IN CONSTRUCTION PUBLIC PROCUREMENT

While the construction industry is widely being recognised as one of the main engines for the economic development of many countries (Eltyeb, Mahmoud, Shaharon, 2017; Fakhreldin, Abdelgadir & Awaludin, 2017; Kishan, Bhatt & Bhavsar, 2014; Okoye, Ngwu, & Ugochukwu, 2015), there is an increasing concern that public procurement for construction works is always set as an attractive target for corruption and irregularities (Miroslav *et al.*, 2014; Oke *et al.*, 2017). The Construction Sector Transparency Initiative (CoST) estimated that “annual losses in global construction through mismanagement, inefficiency and corruption could reach USD 2.5 trillion by 2020” (CoST, 2012 in OECD, 2016). Unlike other industries, construction procurement is more vulnerable to corruption since it is fragmented, involves many stakeholders in a complex contractual structure that leads to a variety of psychological human behaviour and attitude inclining towards corrupt activities (Nordin *et al.*, 2013). Moreover, “the public procurement regulations and procedures do not represent an effective obstacle to acts of bribery” (Patraş, 2016, p47). Bribery in public procurement for construction services could take place at various points of the procurement processes. That is, it could be “bribes to award maintenance contracts; bribes by a bidder to ensure the project design improperly favours the bidder; bribes to rig the outcome of a tender; bribes to supervising engineers or public officials to approve defective or non-existent work or to over certify the value of work conducted; bribes by clients to project engineers to delay issuing payment certificates or granting of extensions of time; or bribes by contractors to secure such certifications or extensions of time” (Mwaipungu & Allopi, 2014 p.759). In the construction industry, more especially for large projects or contracts, generally there are few companies that can undertake the work, as such repeated interaction between companies tends to be inevitable (Oke, Aigbavboa, Mangena, 2017, p497), and such relationship could be inclined to irregularities (Nordin *et al.*, 2013). This is coupled with the lack of knowledge and experience in the use of modern and integrated systems which on one hand, prevent effective management of the procurement process within the public sector (Mahamadu *et al.*, 2015), and on the other hand expose the procurement system to maladministration and irregularities. In this regard, Islam *et al.* (2017) are of the view that the senior management’s attitude and rigid organizational culture in the public sector are also seen as a barrier to effective administration of public procurement. According to Dzuke and Naude (2017), most of the problems affecting the public procurement process are found in the advertising, bid evaluation and contract stages of the public procurement processes. To support this notion, Patraş (2016) identifies the bid evaluation phase as the critical stage in the public procurement system given that it is at this stage where most of the maladministration and irregularities are detected. Overall, these studies suggest that there are indeed some irregularities in the public procurement for construction services, however, there are still uncertainties in the nature and extent of the irregularities in the procurement management processes in the delivery of construction services.

PROCUREMENT POLICIES, SYSTEM AND PRACTICES IN SOUTH AFRICA

The public procurement practice in all the spheres of government and state-owned enterprises in the Republic of South Africa is regulated through various pieces of legislative frameworks. Hereunder are the crucial legislations in relation to the regulation and governance of the public procurement practice in South Africa. In this context, the Constitution of the Republic of South Africa is the prime legislative framework.

Public Procurement Policy Frameworks

Constitution of the Republic of South Africa Act 108 of 1996

The Constitution of the Republic of South Africa requires that legislation at the national sphere of government prescribe a framework within which the preferential procurement policy must be implemented. In addition, Section 217 (1) of the Constitution requires for the procurement system to be transparent, fair, equitable, competitive and cost effective (Republic of South Africa (RSA), 1996).

Public Finance Management Act 29 of 1999

Section 76 (4) (c) of the Public Finance Management Act, 1999 mandates the National Treasury to develop regulations or issue instructions regarding the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective. In addition, the policy framework also mandates accounting officers of a state department and public enterprise to have and maintains effective, efficient and transparent systems of financial and risk management, as well as internal controls and audit system (RSA, 1999).

Municipal Finance Management Act 53 of 2003

The Local government: Municipal Finance Management Act, 2003 also provides a regulatory framework for procurement at municipalities and municipal entities in the Republic of South Africa. This policy establishes a regulatory framework for supply chain management which includes procurement in municipalities and municipal entities (RSA, 2003a).

Prevention and Combating of Corrupt Activities Act 12 of 2004

The Prevention and Combating of Corrupt Activities Act, 2004 declares corruption and similar irregular activities a criminal offence. The policy framework further establishes a register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts in the public sector. In addition, Chapter 5 of this legislative framework provides for the penalties relating to corrupt offences, as well as the establishment of a register for tender defaulters (RSA, 2004).

Preferential Procurement Policy Framework Act 5 of 2000

The Preferential Procurement Policy Framework Act, 2000 establishes the way preferential procurement policies are to be implemented. In essence, this policy framework emphasises the preference of the previously disadvantaged majority to participate and benefit in the public

procurement. The previously disadvantaged group includes black, mixed race, people living with disability and women (RSA, 2000a).

Public Service Act 103 of 1994

Chapter six of the Public Service Act, 1994 specifically deals with the inefficiency and misconduct in the public service which include corruption through public procurement. Moreover, Section 20 of this policy framework refers to misconduct as a behaviour that could inter alia incorporate acts that are to the prejudice of the administration and efficiency of a department, the acceptance or demand of any commission, fee or pecuniary or other reward in respect of carrying out or the failure to carry out official duties and any contravention of the prescribed code of conduct or any provision thereof (RSA, 1994).

Public Service Regulations, 2001

Chapter two of the Public Service Regulations of 2001 provides the code of conduct which prohibits an employee from using his or her official position to obtain gifts and benefits for himself or herself during the performance of his or her official duties. It also obliges an official to report corruption, fraud, nepotism and maladministration to the appropriate authorities. The policy further requires an official to avoid any official action or decision-making process that would result in improper personal gain; and requires an official not to favour relatives and friends in work-related activities and never abuse his or her authority (RSA, 2001).

Competition Act 89 of 1998

The Competition Act, 1998 was introduced to create an efficient, competitive economic environment, thereby balancing the interests of workers, owners and consumers, and focusing on development to benefit all South Africans. Section 38(1) (a) (iii) in particular, prescribes “an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective” (RSA, 1998).

Broad-based Black Economic Empowerment Act 53 of 2003

The Broad-based Black Economic Empowerment Act 53 of 2003 establishes a code of good practice to inform the development of qualification criteria for the issuing of licences or concessions, the sale of state-owned enterprises and for entering partnerships with the private sector; and the development and implementation of a preferential procurement policy (RSA, 2003b).

Promotion of Just Administrative Action Act 3 of 2000

The Promotion of Just Administrative Action Act, 2000 provides regulations and code of good administrative practice in the public sector. This policy provides regulations on the appropriateness of publishing uniform rules and standards which must be complied with in the taking of administrative actions, including the compilation and maintenance of registers containing the text of rules and standards used by organs of state (RSA, 2000b).

Promotion of Access to Information Act 2 of 2000

The Promotion of Access to Information Act, 2000 gives effect to the constitutional right of access to any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith. This legislative framework ratifies the transparency in the public procurement processes, as well as the notification of the successful and unsuccessful bidders (RSA, 2000c).

These policy frameworks provide the basis and guidance for good governance in the public sector procurement in South Africa.

Procurement Management System

To ensure that the procurement management system in the organs of the state is centered to the principles of transparent, fair, equitable, competitive and cost effective, the CIDB provides a systematic framework of the principal procurement activities and associated steps and internal controls in relation to the public procurement processes (Table 1).

Table 1: The procurement management system: Conceptual framework (Source: CIDB, 2007)

No.	ACTIVITY DESCRIPTION	INPUTS	PROCEDURAL MILESTONES
1	Establish what is to be procured	Prepare broad scope of work for procurement and estimate financial value of proposed procurement.	Obtain permission to proceed with the procurement process.
2	Decide on the procurement strategies	Formulate applicable preferential procurement policy; establish contract and pricing strategy; establish targeting strategy; and establish procurement procedure.	Acquire approval for procurement strategies that are to be adopted.
3	Solicit tender offer	Prepare procurement documents; invite contractors to submit their tender offers or expressions of interest; receive tender proposals or expressions of interest; evaluate expressions of interests; prepare evaluation report on shortlisting process; and invite tender offers from shortlisted vendors.	Acquire approval for procurement documents; confirm that budgets are in place; and confirm the shortlist of service providers.
4	Evaluate tender offers	Open and record tender offers received; determine whether tenders offer are completed; accordingly, determine whether or not tender offers are responsive to the tender invitation; evaluate tender submissions; conduct a risk analysis; and prepare a tender evaluation report.	Confirm the commendation contained in the tender evaluation report
5	Award contract	Notify the successful tenderer and unsuccessful tenderers of the outcome; compile contract document; and capture contract award data.	Formally accept tender offer.
6	Administer contracts and confirm compliance	Administer contract in accordance with the terms and provisions of the contract; ensure compliance with requirements thereof.	Capture contract completion / termination data.

Though the procurement management system used in the South African public sector is oriented on the procurement framework developed by OECD, the SA procurement system is accustomed to the governance procedures of the public sector. According to Watermeyer (2013, p12), “procurement systems such as those which are based on the following system objective provide a platform to achieve fair competition, reduce the possibilities for abuse and improve predictability in procurement outcomes are therefore most likely to realise value for money”.

The above table further illustrates that, in order to ensure effective and efficient administration in the public procurement process, appropriate controls at all stages must be established. Moreover, the controls should be performed by entities authorized by legislative framework in the different institutions of government and departments. Ideally, governance and quality oversight structures need to be linked to milestones in the procurement process (Watermeyer, 2013). However, in practice, public sector construction procurement is still perceived to be a synonym of corruption.

Public Procurement Practices

The procurement systems used in the government of the Republic of South Africa are derived from British Models (Mathonsi & Thwala, 2012; Windapo *et al.*, 2016). This traditional public procurement system is still the preferred and widely used procurement method in all the sectors of government in the country. While the public procurement system of the South African government is decentralised to all the respective government spheres and departments (Munzhedzi, 2016, p3), and state-owned enterprises, the National Treasury of the Republic of South Africa, is the regulatory body for overseeing the implementation of the public procurement policy frameworks. To this extent, the National Treasury has recently established the office of the chief procurement officer to *inter alia* address challenges associated with government procurement (Munzhedzi, 2016). As part of the regulatory responsibility, the National Treasury mandates that “organs of state should establish three kinds of committees, namely, bid specification, bid adjudication and bid award committees (Munzhedzi, 2016, p3). Accordingly, the authorized person identified in the organ of the state's procurement committee should be presented with the broad scope of work and financial estimates in order to decide if the procurement should proceed (CIDB, 2016;4). That is, as pointed out by Windapo *et al.* (2016, p116) that, cost is the highest weighted criteria in the traditional procurement systems and is frequently used to select the preferential contractors to deliver certain construction projects in the South African construction industry. However, the effective and efficient of financial management within the public procurement is continuously being questioned (Ambe, 2016; Ambe & Badenhorst-Weiss, 2012; Patraş, 2016; Oke *et al.*, 2017), as construction procurements remain susceptible to “mismanagement, fraud and corruption” (Munzhedzi, 2016, p3), and “irregularities” (Ambe, 2016, p278). In this regard, in 2014 it was reported that, “at least R30 billion was lost due to corruption in the procurement of goods and service in the construction industry” (Fourie, 2015, p40) in particular, while in the public sector in general it was reported that flawed tender processes are estimated to be costing the country R400 billion annually (Mahlaka, 2018). Now, in the South African context, the increasing concern is that the persistent occurrences of maladministration in the public procurement turn to overshadow the public procurement’s legitimate and constitutional principles of good governance and preferential system towards redressing the past discriminatory policies and practices (Ambe, 2016; Ambe & Badenhorst-Weiss, 2012; Bolton, 2006; Munzhedzi, 2016). In order to curb this maladministration, it remains crucially

important to first understand the nature and examine the extent of these irregularities in the procurement system of the various government organs. As it is alluded in one of the public procurement policy frameworks that corrupt and irregular activities relating to tenders and contracts in the public sector is a criminal offense, and as a result, the tender defaulters must be penalized, placed on a register and restricted from future dealing with the public sector (RSA, 2004), the database of the restricted tender defaulters obtained from the National Treasury of the Republic of South Africa is used as a methodology of the study.

METHOD AND DATA

The study has adopted a conventional content approach through which both qualitative and quantitative analysis procedures are performed. The content analysis approach and associated methods of coding, categorizing and thematic procedures were applied (Saldaña, 2015; Williamson *et al.*, 2020) on a secondary data of the study.

Research Data

The database of the restricted construction service providers obtained from the National Treasury of the Republic of South Africa (2017) and published by the CIDB is adopted as a sampling frame of the study. This database consists of a list of one hundred and seventy-nine (179) private construction service providers that have been restricted to deal with the public sector because of contravening some of the public procurement regulatory frameworks in the period between 2010 and 2017 in different government entities in the country. The publication of this database is in accordance with the directives of the RSA (2004) regulatory framework which pronounce that corrupt and irregular activities relating to tenders and contracts in the public sector is a criminal offense, and as a result, the tender defaulters must be penalized, placed on a register, and restricted from future dealing with the public sector. Remarkable, these construction service providers are contracted to form a Public-Private-Partnership (PPP) to deliver services and products in relation to public construction works in various spheres of government, departments and state-owned enterprises across the country. Therefore, the criteria for selecting this database were primarily motivated by this PPP and in particular, the dealings of the private contractors in the public sector construction procurement. For this study, all the restricted private construction service providers were selected and classified in terms of their nature of the irregularities reported to have been restricted for. The data source is valid and reliable given that the National Treasury Department is the custodian of the public procurement processes in terms of providing guidance and regulatory support to all the spheres of government and public entities in the country (Ambe, 2016). The role of the National Treasury is to ensure efficiency and effectiveness in the public procurement processes, and to ensure value for money in the public service provision. The National Treasury is also the lead department in facilitating the implementation of the public procurement policy frameworks in South Africa.

Data Analysis

Content analysis method and the associated techniques of in-Vivo coding, categorizing and thematic procedures were followed for the analysis of the secondary data (Saldaña, 2015; Williamson *et al.*, 2020). As illustrated in figure 2, after the data has been retrieved from the database, the data was then transfer into a word document for the purpose of screening and organizing. This process involved to removing of the contractors' identities as well as their

company registration numbers for ethical reasons. With the use of the MAXQDA qualitative data analysis software, the in-Vivo coding and word frequency procedures were performed on the list of the one hundred and seventy-nine (179) irregularities as attached to the construction service providers. According to Saldaña (2015, p91), the meaning of in-Vivo is “in that which is alive,” and “as a code refers to a word or short phrase from the actual language found in the qualitative data record. Through the in-Vivo coding process, twenty-three (23) forms of irregularities were identified, and were then ranked from 1, for the most frequently reported; to 23, for the least frequently reported in the database.

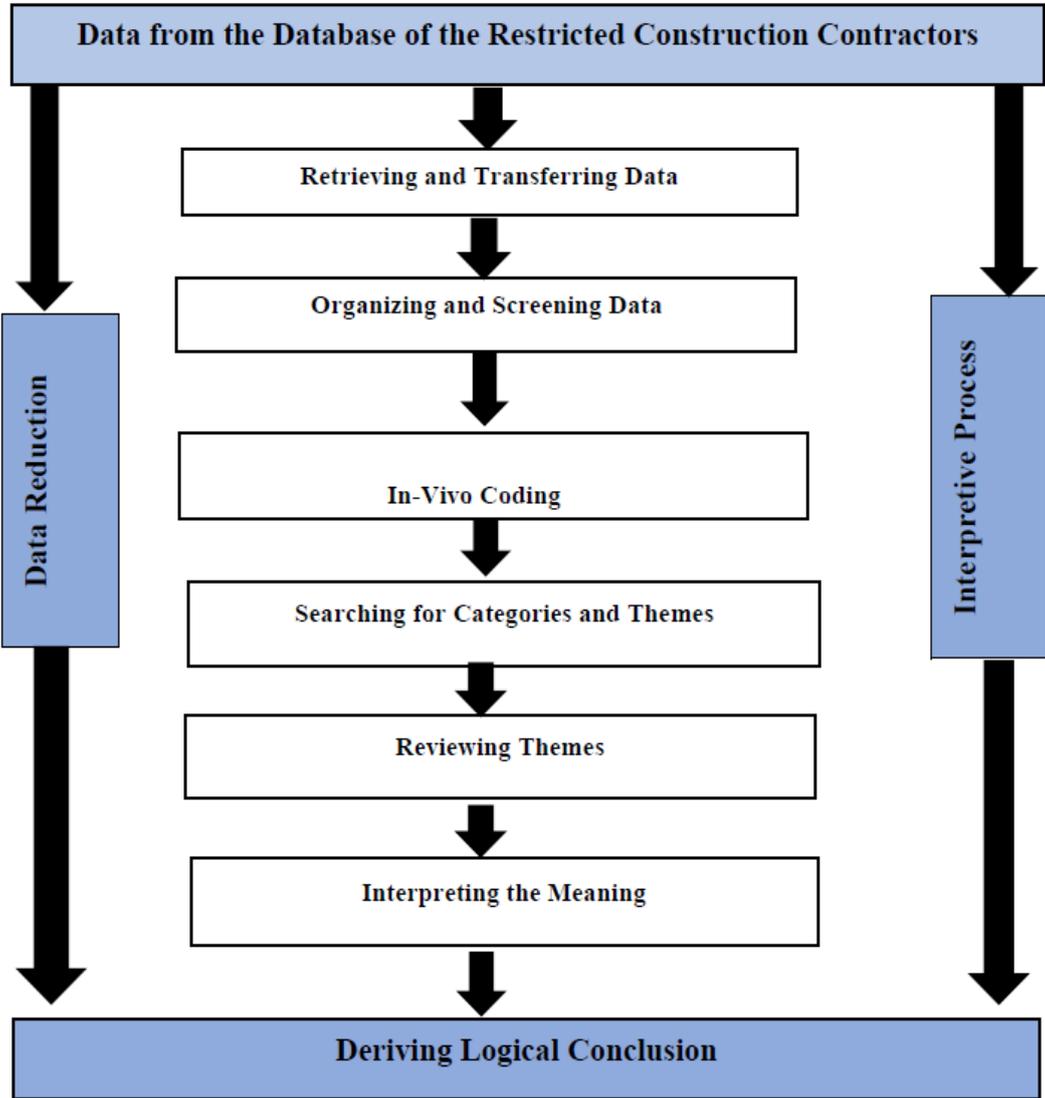


Figure 2: Qualitative data analysis procedures

Methodologically, the analysis procedure of using the frequency of repetition is the most effect way to discover concepts and themes embedded in texts (Kurtzer *et al.*, 2020) leading to the development of a meaning. Accordingly, the coding analysis in this study has enabled the performance of data reduction and interpretive processes in terms of deducing from the raw data to codes and then to categories and themes. Eventually, a logical conclusion was

drawn based on the findings of the study. Remarkable, the content analysis method offers an effective way of data interpretive and deducing as demonstrated in several studies in relation to public sector construction procurement. Recently, Kamudyariwa and Root (2020) have used the similar method to analyze the transcripts of the senior management in relation to a study on barriers to construction procurement change in Higher Education Institutions (HEIs) in South Africa. Similarly, Adnan *et al.* (2012) have also applied the content analysis method to provide insight on ethical issues in the construction industry from contractor's perspective. Therefore, the findings obtained from the content analysis are presented and analyzed in the following section.

FINDINGS

The findings confirm that the public sector construction procurement in South Africa is decentralized across all the spheres of government, departments and state-owned enterprises. These findings are the descriptive frequency of the reported "reason for restriction by the relevant accounting officer/authority" in the public sector construction procurement. From the glance of the snapshot data (Figure 3), we can see that the occurrences of irregularities are evidence in the various government entities and institutions.

Reason for Restriction by the relevant Accounting Officer/Authority	Period From	Period To	Authorised by
Poor Performance	01/12/2010	30/11/2020	Department of Local Government & Housing: Limpopo
Poor Performance	01/12/2010	30/12/2020	Department of Local Government & Housing: Limpopo
Failure to return undue payment	*21/10/2013	22/10/2023	National Treasury
Poor performance	01/12/2010	30/11/2020	Department of Local Government & Housing: Limpopo
Poor performance	01/12/2010	30/11/2020	Department of Local Government & Housing: Limpopo
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Poor performance	01/12/2010	30/11/2020	Department of Local Government & Housing: Limpopo
Poor performance	01/12/2010	30/11/2020	Department of Local Government & Housing: Limpopo
poor Performance	01/12/2015	30/11/2020	Gauteng:Department of Roads and Transport
poor Performance	01/12/2015	30/11/2020	Gauteng:Department of Roads and Transport
Non-performance	20/04/2010	19/04/2020	Witzenberg Municipality
Poor performance	01/12/2010	30/11/2020	Department of Local Government & Housing: Limpopo
Submission of fraudulent BEE certificate	15/05/2014	14/05/2019	South African National Biodiversity Institute
Supplier submitted a falsified Tax Clearance Certificate	2013/12/17	18/12/2022	Witzenberg Municipality
Supplier submitted a falsified Tax Clearance Certificate	2013/12/17	18/12/2022	Witzenberg Municipality
Poor performance	01/12/2010	30/11/2020	Department of Local Government & Housing: Limpopo
Collusion and fraud	31/12/2010	31/12/2020	Johannesburg Water
Non-performance	*21/02/2014	*20/02/2019	Theewaterskloof Municipality
Non-performance	13/02/2014	12/02/2019	Theewaterskloof Municipality
Poor performance	01/12/2010	30/11/2020	Department of Local Government & Housing: Limpopo
Misrepresentation of facts	2014/07/11	07/10/2019	Frances Baard District Municipality
Failure to deliver as per the contractual obligations	07/08/2013	08/08/2023	Agribusiness Development Agency: KZN
Non-performance	20/04/2010	19/04/2020	Witzenberg Municipality
Poor performance	01/12/2010	30/11/2020	Department of Local Government & Housing: Limpopo
Misrepresentation of Facts ;Failure to deposit proceeds into the Provincial Government Revenue Account	18/10/2011	17/10/2021	North West Finance

Figure 3: Snapshot of the irregularities reported in government entities (Source: RSA, 2017)

From the snapshot view of the data, these findings suggest that public sector construction procurement in South Africa is plagued with several irregularities. The results presented in this section emanated from the data analysis processes which involved the application of the MAXQDA software in terms of in-Vivo coding procedure as illustrated in Figure 4.

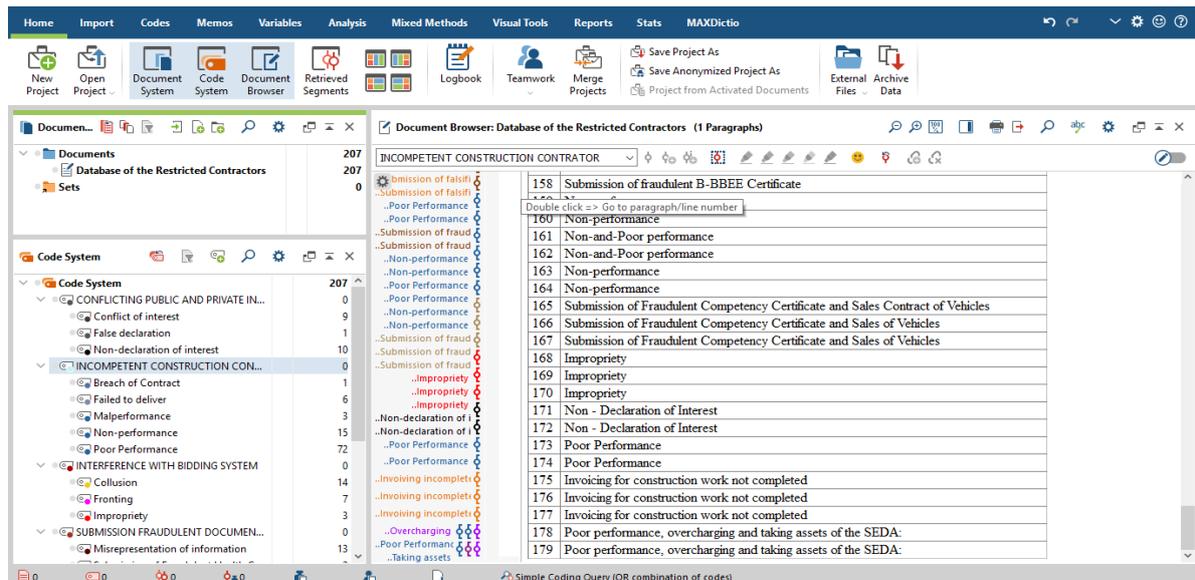


Figure 4: Snapshot of the MAXQDA for content analysis

Table 2: Descriptive presentation of the irregularities

Irregularities	Ranking	Frequency	Percentage
Poor Performance	1	72	34,78
Non-performance	2	15	7,25
Collusion	3	14	6,76
fraud	4	14	6,76
Misrepresentation of information	5	13	6,28
Non-declaration of interest	6	10	4,83
Conflict of interest	7	9	4,35
Submission of falsified Tax Clearance Certificate	8	7	3,38
Fronting	9	7	3,38
Failure to Return undue payment	10	7	3,38
Failed to deliver	11	6	2,90
Invoicing incomplete construction work	12	5	2,42
Failure to deposit proceeds	13	4	1,93
Submission of fraudulent BEE certificate	14	4	1,93
Theft	15	3	1,45
Submission of fraudulent competency certificate	16	3	1,45
Malperformance	17	3	1,45
Impropriety	18	3	1,45
Submission of Fraudulent Health Certificate	19	2	0,97
Overcharging	20	2	0,97
Taking assets	21	2	0,97
False declaration	22	1	0,48
Breach of Contract	23	1	0,48
TOTAL		207	100,00

Table (2) indicates the descriptive analysis of the irregularities in the public sector construction procurement. A total of twenty-three (23) forms of irregularities have been identified from the database of the restricted contractors. The study reveals that poor performance (35%) and non-performance (7%) in accordance with the contractual respectively, are the critical irregularities in the public sector construction procurement.

Another important finding was that contractors often submit false information when participating in the public sector construction procurement, as also illustrated in the below Figure 4. This includes the mis presentation of information on documents such as Tax Clearance Certificates (3%); certificate of Black Economic Empowerment (2%); and Health Compliance Certificate (1%) respectively.

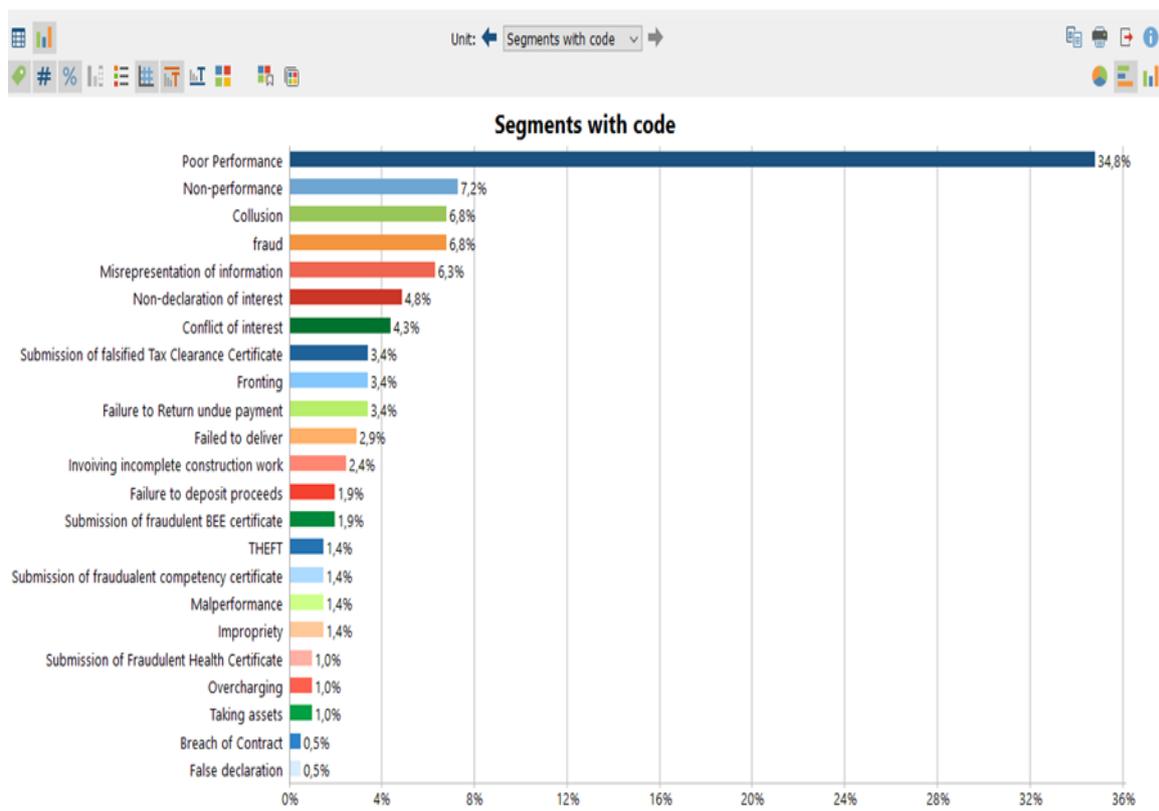


Figure 5: Bar graph presentation of the irregularities

In the same vein, the study also reveals that conflict of interest (4.3%) and non-declaration of interest (5%) respectively are the common irregularities in the public sector construction procurement as shown in the above figure (5). After the descriptive data presentation, five broad themes have been constructed on the bases of the similarities and patterns in the initial coding of the irregularities. The themes identified in these irregularities are shown in Table 3. When ranking the irregularities in terms of the themes, the unproductive contract awarding (47%) is prevalent in the public sector construction procurement. Closer inspection of the table shows that the submission of fraudulent documentation (21%) is also common in the public sector construction procurement.

Table 3: Code and Themes of the Irregularities

Codes and Categories	Themes	Frequency	Percentage
Category 1	Awarding of unproductive contracts	97	46.86
Poor performance		72	34.78
Non-performance		15	7.25
Failed to deliver		6	2.90
Malperformance		3	1.45
Breach of Contract		1	0.48
Category 2	Submission fraudulent documentation	43	20.77
fraud		14	6.76
Misrepresentation of information		13	6.28
Submission of falsified Tax Clearance Certificate		7	3.38
Submission of fraudulent BEE certificate		4	1.93
Submission of fraudulent competency certificate		3	1.45
Submission of fraudulent Health Certificate		2	0.97
Category 3	Collusive bidding	24	11.59
Collusion		14	6.76
Fronting		7	3.38
Impropriety		3	1.45
Category 4	Theft of public assets	23	11.12
Failure to return undue payment		7	3.38
invoicing incomplete construction work		5	2.42
Failure to deposit proceeds		4	1.93
Theft		3	1.45
Overcharging		2	0.97
Taking assets		2	0.97
Category 5	Conflict of public and private Interests	20	9.11
Non-declaration of interest		10	4.28
Conflict of interest		9	4.35
False declaration		1	0.48
TOTAL		207	100

The most disturbing aspect is the above table is the evidence of theft (11%) in the public sector construction procurement. The failure to return undue payments (3%) and the invoicing of incomplete construction work (2%) respectively, are serious forms of theft from the public sector. In the section that follows, it will be argued that most of these irregularities are occurring and detected at the late stages of the public procurement management processes.

DISCUSSION

The five main themes are brought forward for discussion in relation to the irregularities in the public sector construction procurement in the South African context. The first thematic discussion is the awarding of unproductive contracts.

Awarding of Unproductive Contracts

The outstanding finding that emerged from the analysis is that most of the irregularities reported in the public sector construction procurement relate to the awarding of unproductive contracts. This finding suggests that construction work in the public procurement is awarded to contractors who lack the capacity to deliver the works in accordance with the contractual agreement. This finding supports the observation made by Oke *et al.*, 2017, p492), who argue that the current procurement system for construction works is allowing contractors to undertake the work according to their grading, overlooking the capacity in which the contractor can undertake the work. This finding suggests that contractors in the public sector procurement are offered contracts for construction work beyond their capacity to deliver. These findings are consistent with previous research which found that there is inadequate evaluation of the contractors' performance portfolio prior to the awarding of the contract (Ambe *et al.*, 2012). Worryingly, the irregularities in relation to substandard work and contractor not meeting contract specification is identified during the contract management process in the post-award phase of the public procurement (OECD, 2016). The long-term ramifications of poor performance of and failure to deliver the construction work is clearly stated by Watermayer (2013) when arguing that the economic losses due to construction inefficiencies can cause a decrease in the number of jobs created or the flow of money to the beneficiaries of a poverty alleviation programme as economic activity is reduced.

Submission of Fraudulent Documentation

Another important finding was the submission of fraudulent documentation such as Tax Clearance Certificates. According to the National Treasury instruction note 3 of 2014/2015, dated 15 July 2014, persons or institutions conducting business with the state are no longer required to obtain a hard copy of an original and valid tax clearance certificate. Rather, the tax compliance status of bidders should be checked through the tax compliance status (TCS) system (RSA, 2015). Despite the provision of this verification system, the results reveal that construction contractors are deliberately misleading and lacking transparency when dealing with the public sector. In this regard, this finding supports the observations of Patraş, (2016) which shows that "misinterpretation of information; submission of erroneous qualification documents on the personnel's' technical and professional capacity" is prevalent in the procurement of public construction services. The findings further suggest that the submission of fraudulent Black Economic Empowerment Certificates is common in black African's contractors. In this context, the BEE is the policy for economic empowerment of all the previously disadvantaged black people, female, youth, people with disabilities and people living in rural areas, in particular (Ambe *et al.*, 2012). These findings further highlight the contravention of the Prevention and Combating of Corrupt Activities Act, 2004 in the public sector construction procurement. Accordingly, this Act stipulates that misrepresentation of information in relation to tenders and government contracts is a criminal offence (Republic of South Africa, 2014).

Collusive Bidding

According to Laryea and Hughes (2008) most contractors described tendering as a very expensive process. Consequently, as indicated in the findings, construction contractors would resort to collusive bidding in order to have an unfair advantage against the fellow competitors. Collusion is contrary to the principles of free competition (Adnan *et al.*, 2012) because “is a practice aimed at fixing prices, rigging bids, setting up restrictive outputs or quotas as well as dividing or sharing markets by allocating clients, territories, suppliers, or lines of commerce” (Oke *et al.*, 2017, p492). In the South African context where there are few contractors capable for delivering mega construction projects, this finding seems to be consistent with those of Oke *et al.* (2017) who argue that large contracts are prone to collusion because the way that contractors and their clients negotiate and agree on price is complex and not well explained in most of the literature (Laryea & Hughes, 2011). This finding reinforces the possibility that large infrastructure projects must be divided into packages to encourage contractors that do not qualify for large projects to bid for those packages (Oke *et al.*, 2017) of construction works. Moreover, the findings further show that construction contractors are involved in fronting when participating in public procurement. Fronting is dishonest presentation of the organogram profile of the construction contractor. This finding support previous observation which indicated that at times there is lack of honesty and trust from the private sector when dealing with the public sector during the public procurement processes (Kautsch *et al.*, 2015). Moreover, this finding echoes the ethos that construction professionals and contractors are the main pioneers of maladministration (Patraş, 2016) in the public sector construction procurement processes.

Theft of Public Assets

According to Ambe (2012), about twenty per cent of SA government’s procurement budget alone went down the drain each year. He maintains that this was because officials had their fingers in the till, overpaid for products and services and or failed to monitor how money was spent in the budget. Accordingly, the study reveals that payments in the public sector construction procurement are made without prior inspection and verification of the service delivery on site. The findings suggest that at a later stage in the public procurement process the public institutions would discover that the actual work has not been delivered, yet the payment has already been processed to the contractors. Conversely, the contractors that are paid for the work that have never been delivered often fail to return the undue payment when requested by the public sector institutions. As indicated in the findings, the contractors would invoice incomplete construction work as if the work was completely delivered. These findings confirm the observation made by Kelly, Crossthwaite and Maclay (2012), who point out that supervising engineers and public officials are bribed to approve defective or non-existent work or to over certify the value of work delivered. Evidently, these findings suggest that, as maintained by Paul *et al.* (2021), payment related issues seem to be the most occurring unethical practices in construction procurement. Moreover, theft in the public procurement could also mean the stalling of new assets before delivery to the end-user or before being reordered (OECD, 2016). All the irregularities which are associated with stalling from the public budget are detected at the post-award phase of the public procurement cycle.

Conflict of Public and Private Interests

The Public Service Regulations Act 2001 unequivocally warns all public servants in the Republic of South Africa to avoid any official action or decision-making process that would result in improper personal gain. Ironically, the findings suggest that public servants in their private capacity do participate in the public sector construction procurement, irrespective of the strong warning stipulated in the legislative framework. The findings further indicate that public servants when participating in the public sector construction procurement never declare their conflict of interests, while in some instance they submit false declaration. Conflict of interests in public sector construction performance may also be explained in terms of the involvement of lobbyists as referred by Ishak and Said (2015). These authors are of the view that the involvement of lobbyists in the public procurement contributes to the leakages of public funds because they resort to bribery in order to get the information related with the procurement from the officers and then they will sell the information to other interested suppliers at a higher price. These findings are in accord with the sentiment that in public procurement, where the public funds are at stake, there is a need for a greater focus on conflicts of interest Patraş (2016, p50) because public officials will always be tempted to participate in the procurement processes in their private capacities. The conflicts of interests, because of the lack of effective separation of financial, contractual and project authorities are noticeable during the contract approval process in the tendering phase of the public procurement (OECD, 2016). Based on these results, it is possible to hypothesise that as these irregularities are detected in the late stages of the public sector construction procurement system, there is weak scrutinizing and evaluation in public sector construction procurement.

CONCLUSION AND RECOMMENDATIONS

Despite the provision of the numerous policy frameworks which seek to ensure that the management and administration of the public procurement system is fair, equitable, transparent and cost-effective; the public procurement system in the South African government is still engulfed with several irregularities. The empirical findings in this study have not only shed more light on the nature and forms of the irregularities in the public procurement practice but have also extended our knowledge on understanding the critical stages in the public procurement cycle at which these irregularities frequently occur. The findings of this study illustrate that most of the irregularities in the government departments and public entities are detected during the delivery stage, which is at the very late stages in terms of the procurement management cycle. It is therefore possible to hypothesise that at this stage of the procurement cycle, the large portion of the budget for the procured goods and services would have already been spent to the incompetent contractors who failed to performance as per the contractual obligations. Another important finding was the submission of fraudulent invoices by the contractors for goods and services they have never delivered. From this finding, we can infer that the private contractors are dishonest in their dealings and participating in public sector construction procurement. These fraudulent practices further suggests that, on one hand, there is lack of monitoring and expediting from the public sector after the tender contract is awarded the potential service providers, while on the other hand, this could also suggest that there is a lack of integrity and honesty in the private sector when dealing with the public sector. Lastly, there is conflicts of interests from some of the public servants in the public procurement processes. To this extent, some of the public servants do not declare their private business interests and dealings with the public sector.

Based on the findings, we highlight several important implications and recommendations for public procurement practitioners, policy makers and researchers. Firstly, strict proficiency measures in the public sector construction procurement should be introduced to scrutinize and evaluate the potential of the contractors. The assessment of the contractors' capacity to deliver in accordance with the contractual requirements prior to the awarding of contracts is critical in the public sector construction procurement. While tougher measures such as taking the amount of fines higher as to meet the gravity of the procurement irregularities, CIDB, as a body mandated to oversee and regulate the construction in industry in South Africa, should, as also echoed by Oke *et al.* (2017, p492), review the system for grading contractors, in terms of focusing mainly on the capacity of the contractor on delivering the work as well as projects that are successfully completed, than merely paying attention on the grade status of the contractor. Secondly, subsequently to the awarding of contract to the potential contractors, the expediting and monitoring exercise of the contract awarded must be enforced in the public procurement in order to ensure that the construction work is performed in accordance with the terms and provisions of the contract; and to also ensure the compliance with quality requirements thereof. Thirdly, restrict the personal participation of the civil servants in the public procurement processes to avoid conflict of interest. Finally, provide procedural measures to enforce the application of the policy frameworks in relation to public procurement.

LIMITATION AND FURTHER RESEARCH

This study incurs several limitations which in turn pave the path for further research in the area of public procurement and construction industry. Firstly, though the data used is based on construction service providers, the types and categories of the construction works thereof is not explicitly reported in the data. Secondly, the study is limited to a snapshot view of the irregularities as reported by the National Treasury Department in the 2017/18 financial year, and as a result the data is not a sample nor exhaustive of the government entities in the country. Given that most of these irregularities are detected in the later stages of the procurement system, it is possible to hypothesise that the public sector construction procurement lacks measures for verification and monitoring of performance thereof of the potential contractors. Therefore, further research should be conducted to develop some rigorous proficiency measures for scrutinizing the potential of the contractors in terms of capacity to deliver in accordance with the contractual agreements prior to the awarding of contracts.

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