

IMPLEMENTATION OF STATE CAPTURE COMMISSION RECOMMENDATIONS ON PROCUREMENT

No.	Recommendations	Details	National Treasury plan of action/response/remarks
1.	National Charter against Corruption in public procurement	- that the Government, in consultation with the business sector prepare and publish a National Charter against corruption in public procurement, such Charter to include a Code of Conduct setting out the ethical standards which apply in the procurement of goods and services for the public; - every procurement officer in the public service shall, on assuming duty, be required to sign a commitment to observe and uphold the terms of the National Charter; - every natural or juristic person tendering or contracting to supply goods or services by way of public procurement must sign a like commitment to uphold and to adhere to the terms of the Charter and its Code of Conduct; - the content of the National Charter and the Code of Conduct should be widely publicised; - the National Charter and Code of Conduct should be given legal status and effect by an Act of Parliament.	- This matter has been provided for in chapter 3 of the Public Procurement Bill
2.	Creation of an Anti-Corruption Agency against corruption in public procurement	- That the Government introduce legislation for the establishment of an independent Public Procurement Anti-Corruption Agency (PPACA). - The Agency shall consist of: - Council - Inspectorate - Litigation Unit - Tribunal - Court	Government intends to use existing institutions with mandates to deal with corruption, e.g. SIU

3.	Protection for Whistle Blowers	That the Government introduce legislation or amend existing legislation to among others - ensure that any person disclosing information to reveal corruption, fraud or undue influence in public procurement activity be accorded the protections stipulated in article 32(2) of the United Nations Convention Against Corruption; - identifying the Inspectorate of the Agency as the correct channel for the making of such disclosure; - authorising the Litigation Unit of the Agency to incentivise such disclosures by entering into agreements to reward the giving of such information by way of a percentage of the proceeds recovered on the strength of such information; - authorising the offer of immunity from criminal or civil proceedings if there has been an honest disclosure of the information which might otherwise render the informant liable to prosecution or litigation.	Government intends to amend the Protected Disclosures Act to deal with any gaps which currently exist in that law (to be initiated by the DoJ&CD)
4.	Deferred Prosecution Agreements	That the government introduce legislation for the introduction of deferred prosecution agreements by which the prosecution of an accused corporation can be deferred on certain terms and conditions	To be considered for inclusion in the Criminal Procedure Act by the Department of Justice
5.	Creation of a Procurement Officer's Profession	- That consideration is given to enacting legislation that will establish a professional body to which all officials who work in the area of public procurement should belong - Such professional body will fix the qualifications and the necessary training and experience necessary for membership of the profession - Such training and qualification to include high standards of integrity and a commitment to resist mismanagement, waste and corruption - That the procurement system in every procuring entity be managed by a duly qualified public procurement official being a member in good standing of the profession	Discussion will be held with the OCPO on the initiation of legislation to professionalise the SCM practitioners in private and public sector.

		- That the Tribunal of the Agency act as the disciplinary committee of the profession with power to strike a member from the Roll or to impose such other disciplinary sanction as the case may require	
6.	Enhancement of Transparency	Commission recommends that set standards of transparency consistent with the OECD Principles for integrity in public procurement be formulated by National Treasury for compulsory inclusion in every procurement system adopted by a public procurement entity	- National Treasury to consider issuing an Instruction in the short-term setting standards and require mandatory of these in the procurement systems of institutions - See clause 5(1)(d), (2)(c), (4) and 6(1)(a)(ii) of the PP Bill
7.	Protection Accounting Officers/Authorities acting in good faith	That the legislation dealing with the duties and responsibilities of Accounting Officers/Authorities be amended to insert a provision which reads: <i>“No person is criminally or civilly liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or duty in terms of this Act unless such person acts negligently”</i>	- This matters is provided for in clause 19 of the Bill in respect of procurement - Proposed provision will be considered during the review of the PFMA- see section 176 of the MFMA
8.	Suggested amendment of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 (“PRECCA”)	To strengthen the duty of private sector entities to put in place measures against bribery it is recommended that PRECCA be amended by the introduction of a section 34A reading as follows: “34A Failure of persons or entities to prevent bribery (1) Any member of the private sector or any incorporated state-owned entity (‘A’) is guilty of an offence under this section if a person (‘B’) associated with A gives or agrees or offers to give any gratification prohibited under Chapter 2 to another person (‘C’) intending- (a) to obtain or retain business for A or (b) to obtain or retain an advantage in the conduct of business for A, save that no offence shall be committed where A had in place adequate procedures designed to prevent persons associated with A from giving, agreeing or offering to give any gratification prohibited under Chapter 2.	To be considered by DoJ&CD

		(2) For the purposes of section 34A(1), a person ('B') is associated with A if (disregarding any gratification under consideration) B is a person who performs services for or on behalf of A. The capacity in which B performs services for or on behalf of A does not matter."	
9.	Suggested amendment of the Political Party Funding Act No. 6 of 2018	That the Act be amended to criminalise the making of donations to political parties in the expectation of or with a view to the grant of procurement tenders or contracts as a reward for or in the recognition of such grants having been made.	To be considered by Department of Home Affairs
10.	Consideration be given to the enactment of legislation for	- the greater centralisation of public procurement in certain aspects	Current Transversal model contracting From a practical perspective, highly centralised procurement may result in acquisitions that are largely generic and hence not fit-for-purpose to a user. The costs and logistical challenges of warehousing and distribution inherent in central acquisition could easily undermine any price gains in buying bulk. From a legal perspective, centralisation is also difficult because of our public finance management system in that public entities are responsible for their own finances. To take procurement decisions away from public entities in a centralisation move would seriously undermine the coherence of this system.
		- the better harmonisation of the legislation applying to public procurement	Public Procurement Bill seeks to harmonise legislation on public procurement and eliminating fragmentation in procurement laws
		- the better guidance of public procurement officials in applying the legislation governing public procurement	Proposal in the Public Procurement Bill for the Regulator to provide guidance to officials. This can be done through workshops and guidelines to be issued by the Regulator from time to time
		- the better training of public procurement officials	Already provided for the in PP Bill- clause 5(1)(c)

		- the discontinuance of any deviation based on the concept of a sole source service provider	Discuss with OCPO- to not include this as a procurement method
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