

Book Review



PUBLIC PROCUREMENT REGULATION

for 21st Century Africa

by Sope Williams-Elegbe
and Geo Quinot (editors)

(370 pages)

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"The state is or can be master of money, but in a free society it is master of very little else ."

– William Henry Beveridge (1879-1963)

Governments around the world allocate substantial portions of their budgets to the award of state contracts for the provision of goods and services. The World Bank reports that an estimated US \$9.5 trillion is spent on public procurement globally by all countries. Of this amount, developing countries, of which Africa is a part, spend US \$820 billion on public procurement. Not surprisingly, the allure of this "*pot of gold*" has required extensive reforms to the regulatory regimes that govern public procurement. These laws have had to deal with

many aspects of public procurement, which in effect has become the oxygen of much economic activity throughout Africa and around the globe.

The main propelling factors in the development and expansion of public procurement laws include public governance reform, the need for effective public finance management, external funding, participation in the global economy, the fight against corruption and a desire for more efficient service delivery.

Further accelerators of this law reform process are developmental and infrastructure agendas, regional integration, moving procurement into the digital age, and greater attention to environmental considerations as part of achieving sustainable public procurement. Ultimately, the goal is the optimum use of the hard-earned taxpayer's contribution to the fiscus.

There remain innumerable problems in implementing coherent public procurement policies. One of the authors of this work, Dr Tebogo Makube, Chief Director: Industrial Procurement of the Department of Trade and Industry in South Africa, observes:

"...there is a lack of compliance by organs of state in implementing some horizontal policies, especially... in the specifications, advertising, evaluation, adjudication, and awarding of tenders. The causes of non-compliance appear to range from wilful non-compliance to lack of knowledge and limited capabilities by government departments to implement these policies."

This book consolidates a series of significant contributions by a group of legal and academic experts, public officials, international office bearers and independent NGO representatives who deal with various aspects of public procurement law and related issues. They provide a comprehensive range of perspectives and explore potential remedies and reforms in this critical field of law, all in the context of contemporary Africa.

The 15 chapters include topics such as development opportunities, donor and international lending, policies aimed at industrial development and economic transformation, electronic procurement in Africa, bidder and contractor remedies and human rights. The use of civil activism in combating corruption in South Africa is dealt with, as is self-cleaning of debarred contractors in public procurement. Comparative studies such as supplier remedies under Namibian law, Nigerian defence procurement as a counterterrorism strategy, the complaint and administrative review mechanism in Ghana, as well as lessons from the European Union and the World Bank's approach to remedies, all provide fertile guidelines to further policy, legislative and enforcement reform.

Each chapter concludes with extensive references including internet sources. There is a table of cases, statutes and regulations from 26 African and other jurisdictions. Also included is a bibliography of research on public procurement regulation in Africa, developed and maintained by the African Procurement Law Unit of Stellenbosch University. Schematic tables, case studies, and concluding summaries to each chapter enhance an understanding of the text and suggested recommendations.

The joint editors are Professors Sope Williams-Elegbe LLB, LLM, PhD, and Geo Quinot BA, LLB, LLM, MA, LLD, respectively Deputy Director and Director of the African Procurement Law Unit. They and the 14 other eminent contributors have created a wide-ranging, insightful analysis and examination of this dynamic and constantly evolving sphere of the law.

The structure and lay-out of the text, curated by publisher Juta, has produced an integrated and readable resource that will be welcomed by legal practitioners, legislators, compliance officers, policymakers, potential bidders, financiers and scholars alike. So extensive is the spectre of corruption in public procurement, no doubt law enforcement officials will also find valuable guidance from this work.

Advocate Kevin Malinga, Deputy Public Protector of South Africa, writes in the foreword:

"Public procurement regulation is not a challenge unique to any particular country. It is a global challenge, and failure to meet it is responsible for the underperformance of economies and a myriad of social ills. The various experiences highlighted herein are an instructive resource from leaders in the area of public procurement."

Review by Louis Rood BA LLB (UCT), Consultant at Fairbridges Wertheim Becker Attorneys.