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### **Zondo final report – public procurement system not fit for purpose, says Zondo**

Public procurement, although necessary for government to fulfil its service delivery mandate, is not without challenges. It needs urgent reform and for the legislation that governs it to be easily discernible and to work in harmony, and for those who oversee it to be fully accountable. These are some of the conclusions of the state capture commission's first report.

Commission chairperson, Acting Chief Justice Raymond Zondo, uses several examples in the report of instances where state organs abused policies and legal prescripts to favour the preferred private entities of their senior management. State-owned entities such as Eskom, Transnet and South African Airways, he writes, circumvented policies meant to guard against corruption by engaging in practices such as deviation, confinements and in some cases, parcelling – the latter involves breaking up large-value contracts into smaller ones in order to bypass the scrutiny associated with them.

The principles that should govern public procurement have largely been eroded over a period of about two decades, according to Zondo.

“The public procurement system must operate in a way which advances the national interest. It must do so in accordance with a system which, in the words of section 217 of our Constitution, is fair, equitable, transparent, competitive and cost effective,” he notes in the report.

“International experience suggests that of all government activities, public procurement is one of the most vulnerable to fraud and corruption. It is widely acknowledged that a public procurement system will only be fit for purpose if it is founded on good governance and good management and enforced through effective monitoring and oversight measures which ensure accountability. Anything less renders the system open to abuse.”

### **Decentralisation facilitated procurement system corruption**

A key turning point that marked the beginning of the decline in governance values is that the public procurement system was decentralised, presumably to suit a variety of agendas. “The marked decentralisation of our procurement system might seem to be far removed from the present enquiry until one considers how that decentralisation may have hampered effective monitoring and oversight whilst simultaneously involving a substantial increase in the number of trained procurement officials required to work the system.”

In the case of Transnet, Zondo notes, large amounts of money went towards payments for advisory services from companies like McKinsey, Regiments and Trillian. “Certain advisory services were procured by Transnet even though Transnet had the requisite internal capacity and expertise and did not require such services.” This is in respect of the parastatal's major locomotives procurement project of 2014 which cost around R54-million.

“In some cases, advisory services were procured for certain projects without the participation, knowledge or approval of the business owners of those projects. In other cases, transaction advisory

services were procured for activities which had already been competently executed by Group Treasury.

“Despite McKinsey having been appointed for certain transaction advisory service at Transnet, there was a parallel appointment of Regiments for the same services. No procurement event preceded this agreement and Regiments had no contractual relationship with Transnet. This meant that there were two contracts for the same work.”

Zondo finds similarities in the work done by the same companies in respect of Eskom. Between the two companies and SAA, he notes similarities in how leadership – in particular boards – played a role in the damage by ignoring their oversight responsibilities and their accountability to shareholder ministers.

“The evidence received by the commission demonstrates that in many cases and in fundamental respects, the boards of the SOE’s have shirked their responsibilities, or worse, used their powers to corrupt the SOEs which they have been appointed to protect.”

This collective misconduct, he points out, was often evidenced by the abuse of centralised procurement processes so that the approval authority for high value tenders becoming concentrated in the hands of a small group of top executives and board members.

“The examples illustrate the involvement of senior government officials (including the former president and members of the cabinet) in questionable relationships, to say the least. Misconduct permeated the boards of the SOEs and also implicated senior administrative officials.”

### **Unruly legislation a challenge for accounting officers**

For accounting officers and those working in supply chain management, the challenges related to navigating the legislative framework around procurement.

“The sheer number of the Acts and the regulations which address procurement issues makes it very difficult for conscientious officials to get a clear understanding of what is required from them. There is a need for procurement officers to interpret and to harmonise the various legislative enactments which would not be the case if the legislation was codified and unified.

This fragmentation, Zondo says, causes gaps and disharmonies, which present a considerable challenge to honest procurement officials, while enabling dishonest officials to exploit obscurities and contradictions in the law.

“In the view of the commission the failure to identify the primary intention of the Constitution is unhelpful and it has negative repercussions when this delicate and complex choice has to be made, by default, by the procuring official.”

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