

2024 Procurement Watch Report

On Procurement Risk Trends



Inside the Report

List of Tables	II
List of Figures	III
Abbreviations	III
1 Introduction	01
2 The statutory regime for procurement in the ordinary course	02
3 About deviations	06
4 About expansions	07
5 Debarment of suppliers	09
7 Deviations data	10
8 Contract expansions data	16
9 Debarred supplier data	23
10 Methodology	25
11 Conclusion	25

List of Tables

Table 1: 10 largest deviations per value of deviation requested (2023/2024)	12
Table 2: Entities with highest number of deviations (2023/2024)	14
Table 3: 10 largest contract expansions by value of expansion (2023/2024)	18
Table 4: Entities with highest number of expansions (2023/2024)	21
Table 5: Entities with highest number of expansions (2017/18 to 2023/2024)	22
Table 6: Reasons for restricting suppliers	24

List of Figures

Figure 1: Deviations reported per year (2016 – 2024)	10
Figure 2: Deviations authorised per month for 2023/2024	11
Figure 3: Number of contract expansions reported per year (2017 – 2024)	16
Figure 4: Number of contract expansions authorised per month for 2023/2024	17
Figure 5: Number of suppliers currently restricted per organ of state on the Database of Restricted Suppliers	23

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



Introduction

This report presents an analysis of selected forms of procurement data between 2016 and 2024. It is the fourth Corruption Watch report on Procurement Risk Trends, following the first three reports that were published in [2021](#), [2022](#) and [2023](#) respectively.

These reports specifically focus on trends in deviations and contract expansions, 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.

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 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

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>. 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).

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 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.

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. At local government level, the quotation system must be used for transactions between R2 000 and R200 000 by district municipalities, between R2 000 and R300 000 by local municipalities and between R2 000 and R750 000 by metropolitan municipalities. National and provincial entities subject to the Treasury Regulations must use the open bidding procedure for transactions above R1-million. The open bidding procedure must be used by district municipalities for transactions above R200 000, by local municipalities above R300 000, and by metropolitan municipalities above R750 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 required 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



⁷ The Act can be found at <http://www.lawsouthafrica.up.ac.za/index.php/current-legislation>. ⁸ The Regulations can be accessed at <https://www.treasury.gov.za/legislation/regulations/PREFERENTIAL%20PROCUREMENT%20REGULATIONS,%202023.pdf>. ⁹ Both the Act and the Regulations can be found at <http://www.lawsouthafrica.up.ac.za/index.php/current-legislation>. ¹⁰ Both the Act and the Regulations can be found at <http://www.lawsouthafrica.up.ac.za/index.php/current-legislation>. ¹¹ National Treasury PFMA SCM Instruction No. 02 of 2021/22; Municipal SCM Regulations 12, 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; 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:

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.

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

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

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 bidder²⁰

¹⁸ PPPFA section 2(1)(d).

¹⁹ PPPFA section 2(1)(f).

²⁰ PPPFA section 2(1)(f).

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

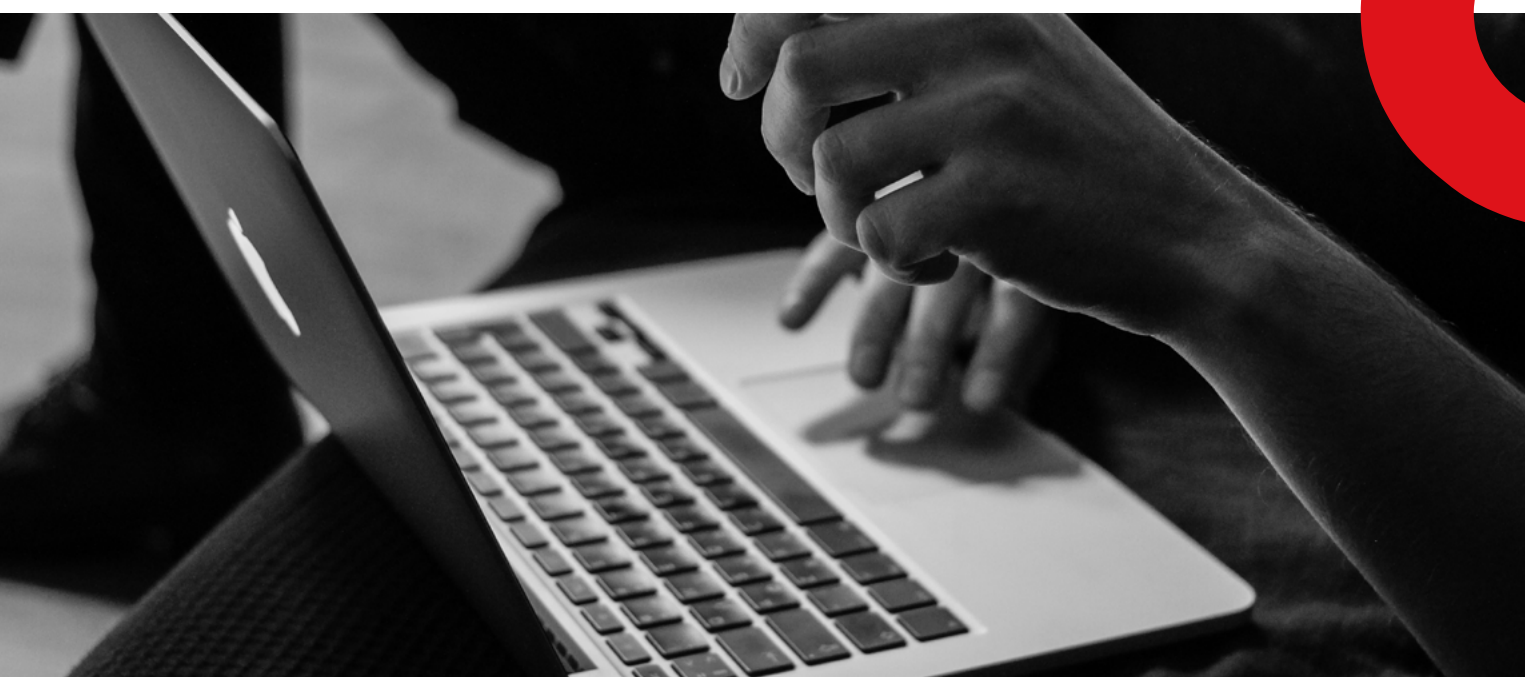
In terms of the Municipal SCM Regulations, local government entities may deviate from prescribed procurement procedures in a number of specified circumstances, including emergencies and where there is only one supplier that can provide the required goods or services, as well as “any other exceptional 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).



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.

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

²⁷ MFMA section 116. ²⁸ The Act can be found at <http://www.lawsofsouthafrica.up.ac.za/index.php/current-legislation>.

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

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 “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.

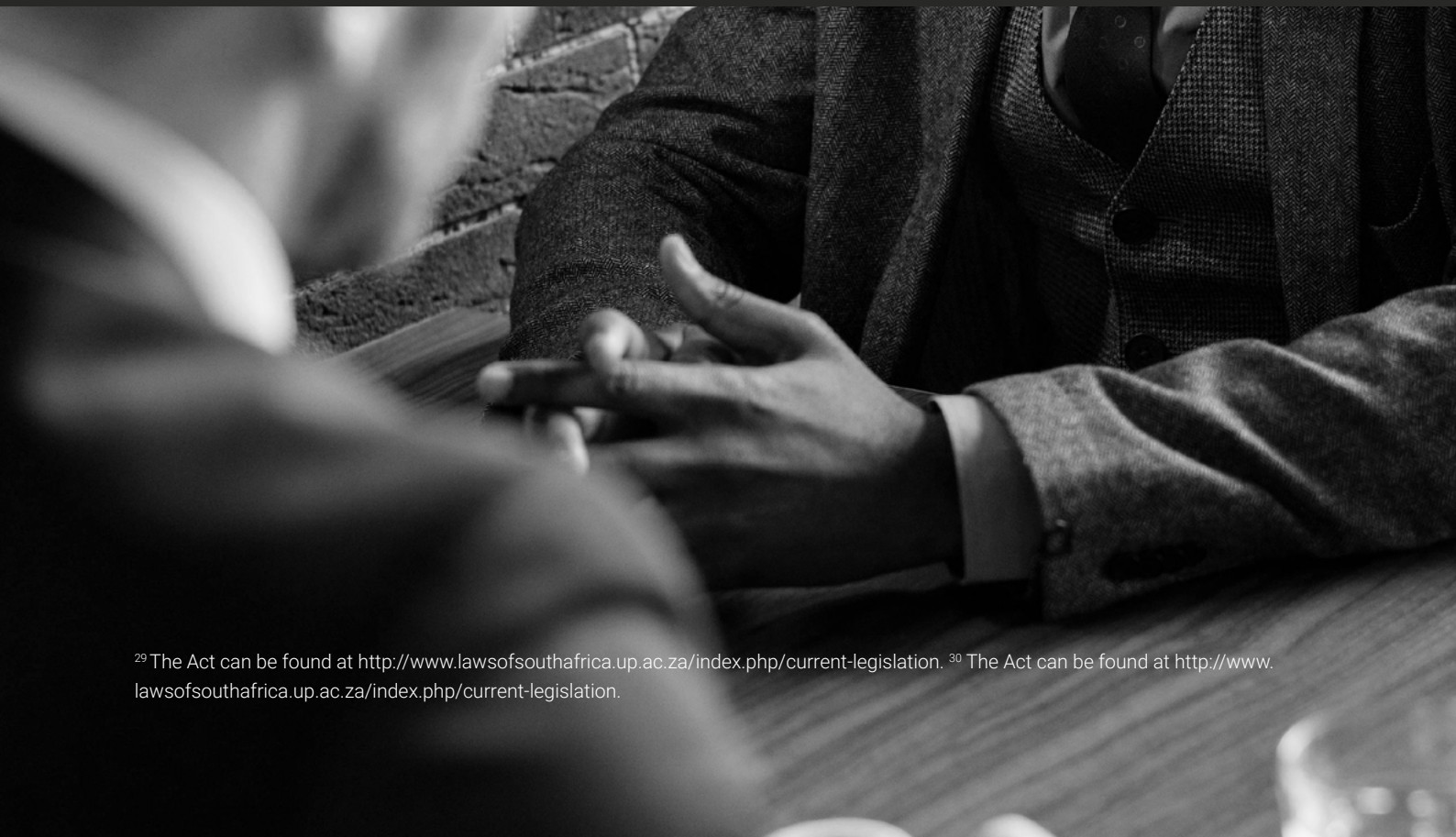
Remedies

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.

²⁹ The Act can be found at <http://www.lawsofsouthafrica.up.ac.za/index.php/current-legislation>. ³⁰ The Act can be found at <http://www.lawsofsouthafrica.up.ac.za/index.php/current-legislation>.



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 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.

³¹ The Regulations Regarding the Register for Tender Defaulters, 2005, made under PRECCA can be found at <http://www.lawsouthafrica.up.ac.za/index.php/current-legislation>. ³² See <http://www.treasury.gov.za/publications/other/Register%20for%20Tender%20Defaulters.pdf>. ³³ See <http://ocpo.treasury.gov.za/RestrictedSupplier/RestrictedSuppliersReport.pdf>.

Deviations data

Reported deviations 2016–2024

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 2023/24 financial year.³⁴ The most significant observation regarding the deviation data of the 2023/24 financial year is the material increase in the number of reported deviations in 2022/23. The data show a massive increase of 207% from 2022/23 to 2023/24. While deviation numbers had been decreasing from 2017/18 to 2021/22, the sudden surge in deviations in the last two years is a cause for 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.

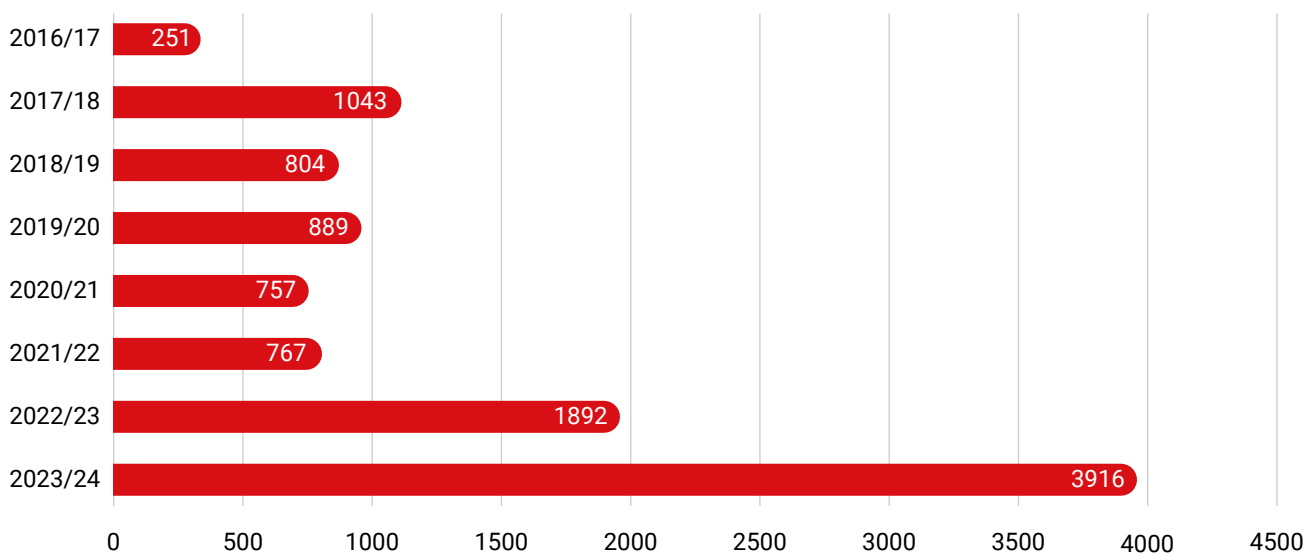
While the number of reported deviations increased dramatically between 2021/22 and 2023/24, the value of deviations interestingly fluctuated significantly. These values are based on the reported value of deviations, bearing in mind that in a notable number of instances the value of the deviation was not reported. The total reported value of procurement via deviations in 2021/22 was around R34-billion. In 2022/23, the value of procurement via deviations was around R11.9-billion. In the 2023/24 financial year, however, the total reported value of procurement via deviations increased to around

R24.8-billion. Thus, while the total number of reported deviations increased more than five times in value from 2021/22 to 2023/24, the value of such deviations has declined. It is not clear that this represents a trend.

In 2021/22, 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. In 2023/24, the top five deviations account for R8.4-billion of the total of R24.8-billion in deviations. In other words, a large portion of the total value is represented by just a few deviations and in addition there is a high number of smaller value deviations. The fact that there is an increase in the number of deviations could mean that they 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.

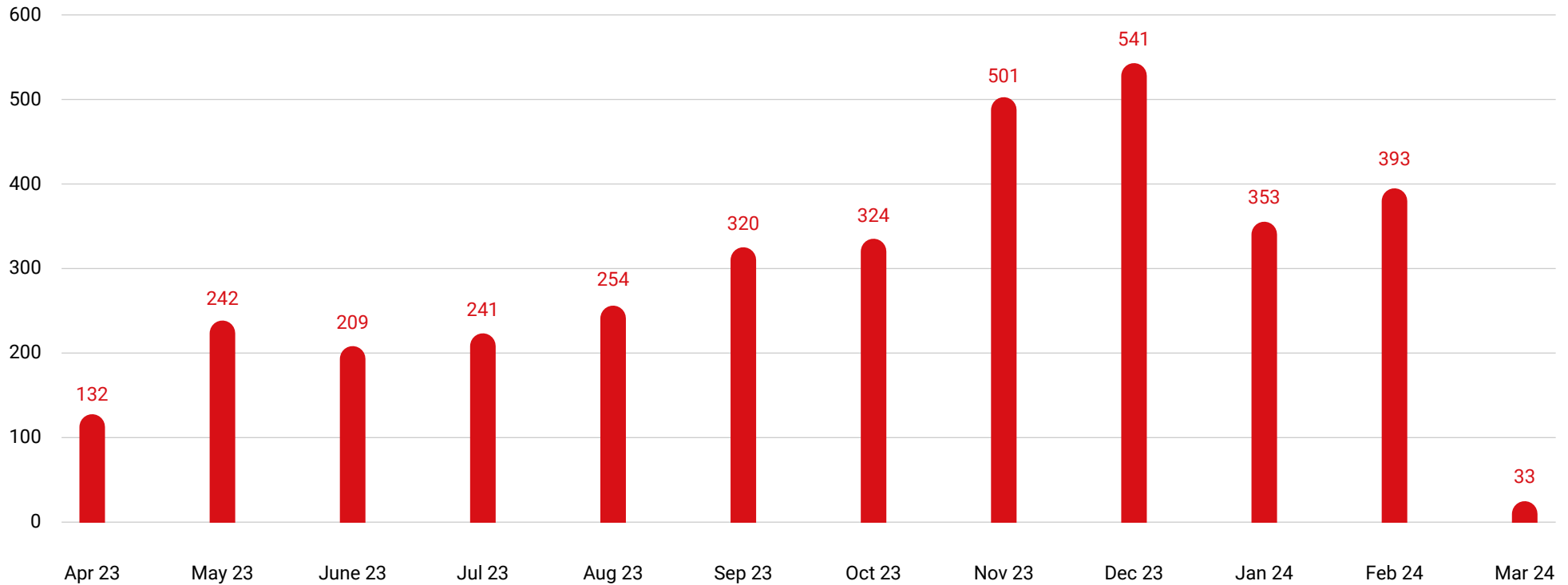
Figure 1: Number of deviations reported per year (2016 – 2024)



In the analysis of deviations authorised per month for 2023/24 contained in Figure 2 below we can see a surge in the authorisation of deviations for national departments and their entities during November and December 2023. There are also smaller surges in January to February 2024 and September to October 2023. Unfortunately, we do not have the spending data per month to accompany the data for the deviations authorised. This analysis seems to suggest that if spending data were analysed, a spending surge would follow the spikes in the award of contracts. Improved procurement planning could alleviate the use of some deviations.

Figure 2: Deviations authorised per month for 2023/2024 financial year

Number of deviations authorised for national departments and entities: 2023/24



Note that the dates for the authorisation of some deviations were unknown and that data was excluded.

10 largest deviations by transaction value in the 2023/2024 financial year

Table 1 below sets out the 10 largest deviations from prescribed procurement procedures in transaction value in the 2023/2024 financial year based on reported deviation amounts. Just the top ten highest deviations account for R17 billion. Notably, Eskom appears three times in the top 10 list.

Table 1: 10 largest deviations per value of deviation reported (2023/2024)

Entity/Department	Project Description	Supplier	Rand value of Deviation	Reason for Deviation	Contract Expiry	Source
National Home Builders Registration Council (NHBRC)	Licenses and subscriptions excluding Azure for a period of three years	Microsoft Ireland	R3 662 196 614.00	Sole Supplier	28 02 2026	Q4_2023/24
Eskom Holdings SOC Ltd	Provision of Maintenance Services, Operating Services, and Outage Execution with Technical Support for Flue Gas Desulphurization Plant System at Kusile Power Station for a period of Five (05) Years	GE Steam Power S&E Africa (Pty) Ltd	R2 122 029 251.71	Kusile is the only station within the Eskom Fleet fitted with FGD technology. This technology is not well understood within our shores, thus making GE the best supplier to handle it since they designed, constructed, and commissioned this plant at Kusile. The current maintenance contractor is not performing as they do not have experience on the FGD plant hence the plant is currently failing and without redundancy. There are high rates of reworks and failures on the contractor's new installations which results in the new plant equipment breaking before it even operates or even not operating to the expected life. The plant was constructed by GE using different OEMs for equipment that makes up the plant, there are between 15 to 20 different equipment packages supplied by different suppliers.	13 07 2028	Q2_2023/24
Universal Service and Access Agency of South Africa (USAASA)	To appoint a panel of Service Providers to supply DTH Set Top Boxes and related Accessories	Panel of preferred service providers appointed through a deviation process by National Treasury	R1 400 000 000.00	It was recorded that the number of STBs in the branches will not be sufficient for the current and future registrations. Based on above considerations, it was clear that we will require more STBs to cover new registrations and areas where there may have shortfalls. The entity was therefore requested to initiate the procurement process of the 300 000 additional DTH STB's	02 11 2026	Q4_2023/24
Eskom Holdings SOC Ltd	Urgent Procurement of coal for Arnot, Camden, Matla, Majuba and Tutuka Power Stations - PED	Sarmco Group (Pty) Ltd	R600 634 128.00	The coal stock levels at the power stations are significantly less than the prescribed Eskom minimum level	07 03 2024	Q2_2023/24

Entity/Department	Project Description	Supplier	Rand value of Deviation	Reason for Deviation	Contract Expiry	Source
The South African National Roads Agency SOC Ltd (SANRAL)	Emergency Routine Road Maintenance Project Located on National Route R26 Section 6 To 9 From Bethlehem (Km 0.00) To Ladybrand (Km 46.41), National Route R34 Section 11 To 12 From Vrede (R546 Intersection) (Km 0.00) To Bothaspas (Km 16.36), National Route R74 Section 1 From N5 West of Harrismith (Km 0.00) To Free State/KwaZulu Natal Border (Km 31.46)	Damians Contractors	R589 904 420.00	Emergency	29 01 2025	Q4_2023/24
Independent Communications Authority of South Africa	Spectrum Maintenance	GEW	R518 654 350.00	GEW Technologies as an OEM, they are the only able service provider to deliver the comprehensive maintenance, support, and updates for the items required	13 04 2026	Q1_2023/24
State Information Technology Agency	Request for a single source appointment of Telkom SA SOC Limited for all existing Telkom access links lines connectivity for various government departments for a period of eighteen (18) months	Telkom SA SOC Limited	R504 047 325.65	The existing infrastructure is from Telkom.	08 09 2024	Q1_2023/24
Government Communication and Information System (GCIS)	UIF: Benefit	Mediamark, Motswako, MSG Group sale, Primedia Broadcasting, Radio Gagasi, Radio Heart, SABC, United station, YFM	R477 066 163.00	The medium selected will best meet the intended largest audience	31 12 2023	Q3_2023/24
Financial Intelligence Centre	Request to deviate from the normal bidding process to enter into a lease agreement with the current landlord, Centurion Vision Development (Pty) Ltd, for the period 1 August 2023 to 30 November 2033 on a single source basis	Centurion Vision Development (Pty) Ltd	R469 599 901.40	Over the last 10 years, the FIC has invested over R43 million in installation, set-up costs and security improvements at Byl's Bridge Office Park, to ensure that the premises comply with the FIC's mandate and requirements. It will not only be impractical but also not cost effective for the FIC to make use of any of the other service providers, given the associated costs.	30 11 2033	Q1_2023/24
Eskom Holdings SOC Ltd	Design verification, Detailed Engineering, Manufacturing, Testing, Supply, Delivery in good order to site, Off-loading, Installation, Commissioning and Plant Optimisation of two sets (2) Hydrogen Coolers and Generator Rotors for Lethabo Power Station.	GE Steam Power Services (Pty) Ltd	R421 759 952.03	Original Equipment Manufacturer	30 05 2027	Q1_2023/24

Highest number of deviations by entity in 2023/2024

The highest number of deviations reported in 2023/2024 was by the Department of Correctional Services (DCS), with a total of 1071 reported deviations. Refer to Table 2. In the vast majority of these instances (1068),

the reason for the deviation is given as 'no contract'. These 1068 deviations took place in the fourth quarter of 2023/24. The South African Social Security Agency (SASSA) and Council for Scientific and Industrial Research (CSIR) had the second and third highest number of deviations respectively. National Treasury's inclusion in the top ten list is of concern.

Table 2: Entities with highest number of deviations (2023/2024)

#	Department	Deviations
1	Department of Correctional Services (DCS)	1071
2	South African Social Security Agency (SASSA)	456
3	Council for Scientific and Industrial Research (CSIR)	331
4	Eskom Holdings SOC Ltd	177
5	Government Communication and Information System (GCIS)	172
6	Public Protector South Africa	84
7	National Treasury	81
8	Armaments Corporation of South Africa SOC Ltd (ARMSCOR)	66
9	Department of International Relations and Cooperation (DIRCO)	56
10	South African Revenue Service (SARS)	53

Of interest is the relatively small number of government departments reporting deviations compared to non-department organs of state. Of the 157 organs of state that reported deviations in 2023/2024, only 24 (15%) were departments, while entities constitute

approximately 85% of all public entities covered by the PFMA. The most common reasons for deviations during 2023/2024 were 'no contract', sole provider and emergency.





Contract expansions data



Contract expansions reported to National Treasury 2017–2024

Figure 3 below shows the number of contract expansions by national and provincial entities reported to the National Treasury between 2017 and 2024. While reported expansions have steadily declined from 2017/18 to 2020/21, the data shows a slowing down of the decline in 2021/22 and an increase in reported expansions from 2022/23. In 2023/24, there has been a rapid increase in the number of expansions to 896. The total value of contract expansions in 2023/2024 exceeded R37.8-billion. This is based on the reported value of expansions, bearing in mind that in two instances the value of the expansion was not reported. This value is 4 times less the total reported value of expansions in 2022/23 (R157-billion), while the number of reported expansions in 2023/2024 (894)

rose when compared to 2022/23 (673). The implication is that while the number of expansions is rising, the average value has declined in 2023/24.

The original value of the expanded contracts in 2023/24 was R33-bn and the contract expansion value, R37.8-billion. This entails a 115% average increase in contract value.

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 894 cases. These range from a 732 881% increase (from an original contract value of R7353.89 to R54-million) to a 0% increase.

Figure 3: Number of contract expansions reported per year (2017 – 2024)

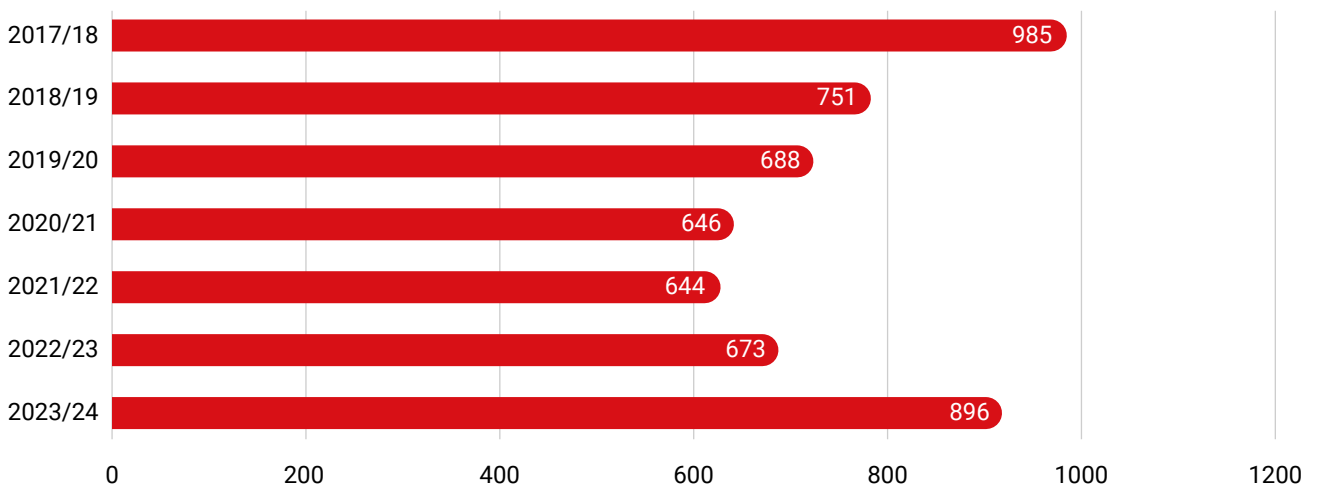


Figure 4 below depicts the number of contract expansions per month. As with the deviations per month, there is also a spike for expansions being authorised in November and December 2023.

Figure 4: Number of contract expansions authorised per month for 2023/2024



10 largest contract expansions (2023/2024)

Table 3 shows the 10 largest contract expansions, by value, reported to National Treasury in 2023/2024. The dominance of Eskom on this list is self-evident, as was also the case in the 2021/22 and 2022/23 reports.

Table 3: 10 largest contract expansions by value of expansion (2023/2024)

Entity/ Department	Project Description	Supplier	Reason for Extension	Original Contract Value	Value of Contract Extensions	Value of Previous Extensions	% Expansion
Eskom Holdings SOC Ltd	Request for approval to modify the cost-plus coal supply agreement with Exxaro Coal (Pty) Ltd for the supply of coal from the dedicated Matla Colliery to the Matla Power Station (PED)	Exxaro Coal (Pty) Ltd	Continuation of the cost-plus coal supply agreement for Matla Power Station from the dedicated Matla mine in support of the coal supply strategy. This is a cost-plus contract and Eskom is liable for all the capital and operational costs. Target value recorded on SAP in 2004 R529 551 351,00	R26 573 285.55	R17 322 240 000.00	R0.00	65187%
South African Revenue Service (SARS)	Request to vary the contract for support and maintenance services of the 774 Multi-functional Devices (Printers), awarded to Evolution Technology Group (Pty) Ltd for a period of nine (9) months from 01 April 2024 to 31 Retrieving data. Wait a few seconds and try to cut or copy again.	Evolution Technology Group (Pty) Ltd	Value & Time	R35 265 076.00	R5 404 950 579.00	-	15327%
State Information Technology Agency	Approve the amendment of the contract with an additional one (1) month with no financial implications from 08 February 2023 to 08 March 2023	Altron Nexus	Business continuity	R921 038 970.60	R2 839 619 479.49	R231 982 445.68	308%
Department of Justice and Constitutional Development (DoJ&CD)	Provision of Travel Management services to the Department of Justice & Constitutional development and the National Prosecuting Authority	1. Travel With Flair 2. Gemini Moon Trading 6 t/a XL Nexus	Business continuity to allow for the finalisation of the replacement procurement process.	R1 016 122 580.94	R538 243 447.70	R195 000 000.00	53%

Entity/ Department	Project Description	Supplier	Reason for Extension	Original Contract Value	Value of Contract Extensions	Value of Previous Extensions	% Expansion
Justice and Constitutional Development	Rendering of Guarding and Specialised Services in various offices of the Department of Justice and Constitutional Development, National Prosecution Authority and Office of Chief Justice	1. Mabotwane Security Services 2. Fidelity Security Services 3. Phepha MV Security 4. Vhugi Protection Services 5. Zack Business Enterprise	Business continuity to allow for the finalisation of the replacement procurement process.	R68 036 036.49	R749 586 384.22	R835 504 456.86	1102%
Eskom Holdings SOC Ltd	The manufacture, supply and delivery of grinding elements and grinding media for 15 (fifteen) Coal fired Power Stations	Mitak	The need for additional funds is due to the projection undertaken by the appointed Contract Manager together with the End-users that shows the value available will not be sufficient to cover the business needs until 31 July 2023. It is proposed that the existing contract be modified with additional funds amounting to R340 548 904.70 to ensure uninterrupted supply of grinding media and grinding elements components to various Generation Power Stations until the new national contract kicks in with effect from 01 August 2023.	R100 000 000.00	R531 105 700.97	R0.00	531%
South African Revenue Service (SARS)	Variation of the procurement vehicle for the licensed software maintenance, support, and related services for the SAP systems within the current approved period from 01 January 2024 to 31 December 2027 at an estimated total SAP systems within the current approved period from 01 January 2024 to 31 December 2027 at an estimated total cost of R416,2m.	SAP South Africa Pty Ltd	Value & Time	R416 200 000.00	R392 701 073.24	-	94%
Rand Water	Construction of Engine Room	WK Construction	Increase in scope of work	R47 763 966.67	R303 114 918.45	-	635%

Entity/ Department	Project Description	Supplier	Reason for Extension	Original Contract Value	Value of Contract Extensions	Value of Previous Extensions	% Expansion
Eskom Holdings SOC Ltd	The construction of section C (91 km) of the 282KM 400kV line from Juno substation to Gromis substation	Siyavuya Umso JV	To modify contract period by four (04) months from 11 May 2023 to 08 September 2023.To increase contract value by R25 011 037.00 excluding VAT	R2 501 103 700.00	R274 759 920.89	N/A	11%
State Information Technology Agency	The Supply of the Fully Managed Data Centre (FMDC) for the Gauteng Provincial Government	BCX	Business continuity	R27 766 742.78	R267 789 088.16	R230 197 741.47	964%



Highest number of expansions by entity in 2023/2024

The highest number of expansions reported in 2023/2024 was by Eskom, with a total of 69 reported

expansions. Refer to Table 2. The South African Forestry Company SOC Limited (SAFCOL) and Legal Aid South Africa had the second and third highest number of expansions, respectively.

Table 4: Entities with highest number of expansions (2023/2024)

#	Department/entity	Expansions
1	Eskom	69
2	South African Forestry Company SOC Limited (SAFCOL)	63
3	Legal Aid South Africa	58
4	State Information Technology Agency (SITA)	57
5	South African Revenue Service (SARS)	56
6	National Treasury	34
7	South African Social Security Agency (SASSA)	22
8	Department of Home Affairs (DHA)	20
9	Financial Sector Conduct Authority (FSCA)	20
10	Human Sciences Research Council (HSRC)	19

It is noteworthy that National Treasury is in the top ten list. Given Treasury’s central role in procurement, it is responsible for leading the way in terms of best practices. This could be a reflection that Supply Chain Management is currently not fit for purpose.






Like deviations, there is a relatively small number of government departments reporting expansions

compared to non-department organs of state. Of the 118 organs of state that reported expansions in 2023/2024, only 22 (19%) were departments, while entities constitute approximately 81% of all public entities covered by the PFMA. The most common reasons for expansions during 2023/2024 were continuity of service and due to delays with other tender modalities or non-responsiveness.



In an analysis of contract expansion data since the 2017/18 financial year, we identified the departments and entities of the state that are most heavily using this procurement method. Table 5 provides a look at the top 10. Eskom is by far the biggest user of contract expansions, having reported doing 649 expansions since 2017/18. The South African Revenue Services is the next biggest user of expansions (with 341 expansions) followed by the State Information Technology Agency (with 166 expansions). Also making it to the top 10 are: CCMA, Transnet, South African Post Office, Legal Aid South Africa, SANRAL, National Treasury and merSETA.

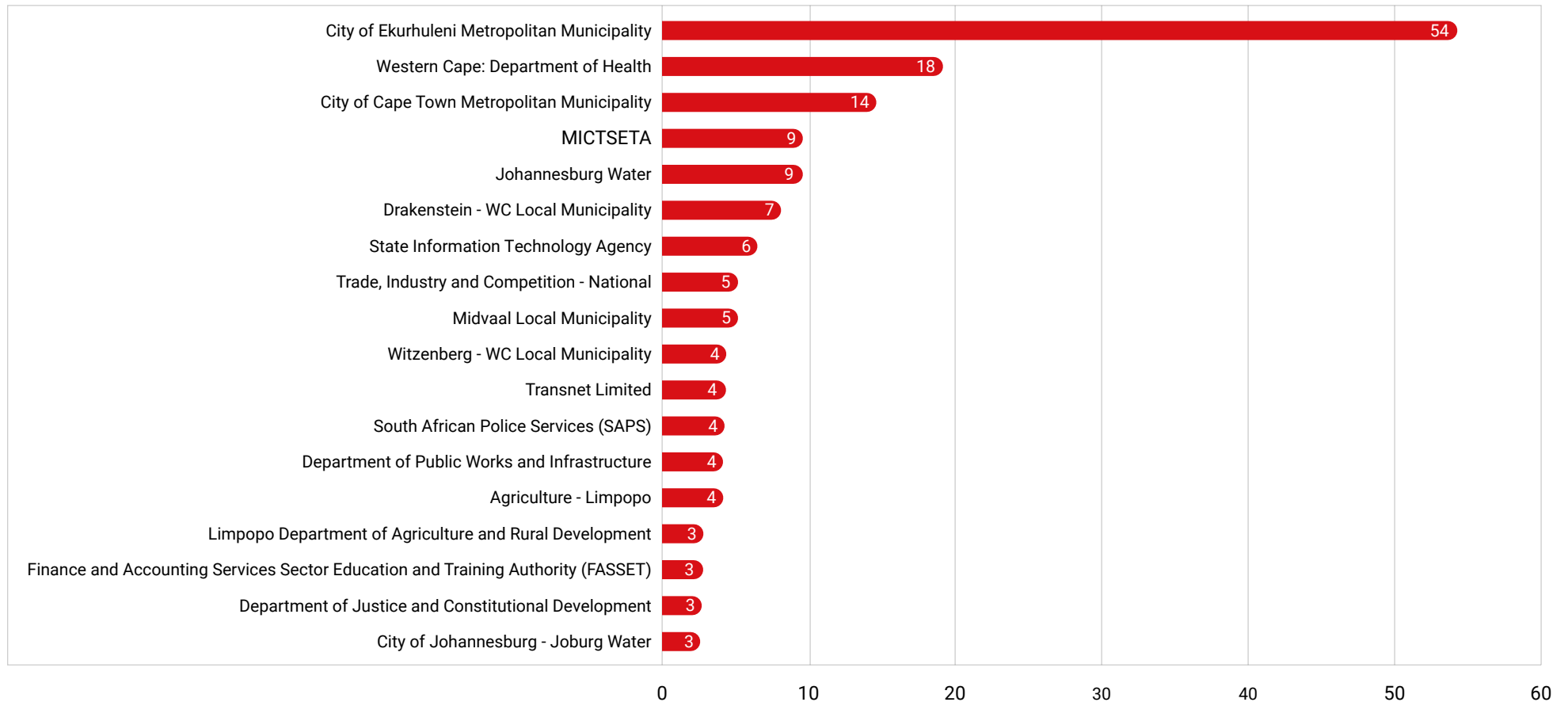
Table 5: Entities with highest number of expansions (2017/18 to 2023/2024)

Departments/entities	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	Trend	Grand Total
Eskom	193	133	56	61	87	50	69		649
South African Revenue Service (SARS)	106	39	36	29	39	36	56		341
State Information Technology Agency (SITA)	38	19	18	8	7	19	57		166
Commission for Conciliation, Mediation & Arbitration	4	6	9	22	23	40	10		114
Transnet	17	11	29	10	4	39	0		110
Legal Aid South Africa	10	11	4	5	6	1	58		95
National Treasury	2	8	13	10	13	11	34		91
Manufacturing, Engineering and Related Services Sector Education and Training Authority (merSETA) SETA	0	0	11	18	22	17	17		85
South African Social Security Agency (SASSA)	15	7	8	0	5	21	22		78
South African Forestry Company SOC Limited (SAFCOL)	0	0	0	1	1	1	63		66

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



A total of 30 organs of state have submitted supplier names to be debarred. Of particular interest is the small number of provincial departments (3), national departments (5), municipalities (10) and public entities (12) 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 organs of state procuring under rules that include debarment on this list (not counting subsidiaries and municipal entities).

As at June 2024, there are 183 suppliers listed on the restricted suppliers list. This compared to April 2023, when there were 171 suppliers on the list. In December 2020, there were 138 suppliers on the list. This represents a net addition of 50 suppliers since December 2020. It is important to note that some suppliers get taken off the list when the period for which they have been on this list (usually 5 or 10 years) has expired.

The analysis in Table 6 shows the reasons for restricting suppliers from doing business with the state, grouped under broad categories.

Table 6: Reasons for restricting suppliers

Reason Category	Reason listed by debarring entity	Percentage of total debarments
Fraud and misrepresentation	Submission of Fraudulent Invoices for goods never received by the department	35%
	Misrepresentation of information	7%
	Collusive bidding and fronting	5%
	Fraud and conflict of interest	5%
	Fraud and Corruption	5%
	Submission of fraudulent B- BBEE Certificate	5%
	Fraudulent B-BBEE Certificate	2%
	Non - Declaration of Interest	2%
	Engaged in corrupt and fraudulent practices in competing for a contract	2%
	Non-performance and Fraud	2%
	Submission of Fraudulent Competency Certificate and Sales Contract of Vehicles	2%
	Submission of Fraudulent Health Certificate	1%
Performance problems	Failure to deliver as per the contractual obligations	7%
	Non-performance	6%
	Poor performance	5%
	Non-performance and poor performance	2%
	Non-delivery	1%
	Poor performance, overcharging and taking assets	1%
Other general (unspecified)	Unethical behavior	3%
	Failure to deposit proceeds of the auction	2%
	Impropriety	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” (6%), “Poor performance” (5%), “Non-performance and poor performance” (2%); and “non-delivery” (1%). 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.

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-Exspansions.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



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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