



Forensic Investigation: The Case of Procurement Fraud in Madibeng Local Municipality (Northwest Province)

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<http://dx.doi.org/10.47814/ijssrr.v6i2.1082>

Abstract

Procurement fraud presents major challenges at Madibeng local municipality resulting in undesirable audit results and high levels of fraud and corruption. Furthermore, regular reports in the media show serious irregular expenditure of procurement fraud in which losses specific to procurement fraud in the tender process amounted R50 million. Further allegation according to tender fraud at the municipality has investigation has resulted in an investigation by the HAWKS, an elite crime fighting units, which is investigating two contracts to Tlou Integrated Tech cc, which didn't have any Construction Industry Development Board grading. The tenders in question were also not advertised as per requirements of the PFMA and MFMA. Tlou Integrated Tech cc submitted invoice totaling R200 869.57 for work that was never done. Similarly, another company called BA Poloborwo Construction received R2 778 409 -for which there was no proof of work done. The Madibeng local municipality is hamstrung due to procurement fraud which has impacted negatively on its financial sustainability and delivery of basic services. The irregular expenditure/fraud at Madibeng local municipality during the era of Jacob Zuma's presidency have not been investigated fully. This lack of investigation has resulted in severe consequence resulting in the increase in irregular expenditure, resulting in heightening the culture of non-compliance, which in turn created an environment vulnerable to procurement fraud. The Auditor general report has consistently found Madibeng municipality to be the worst performing municipality in South Africa over a period of five years in which a total of R562 million has been lost through irregular procurement of good and services. This article addresses procurement fraud in the Madibeng local municipality which has become a problem child for government.

Keywords: *Procurement; Fraud; Challenges; Local Municipality; Forensic Investigation*

Introduction

Bailey (2013:13) postulates that post 1994, local government had the challenge of realising the right to adequate proper service delivery as well as addressing the devastatingly poor living conditions related to basic services delivery such as water, sanitation and electricity. Bolton (2016:11) adds that local municipalities tasked with the provision of basic municipal services such as safe water, sanitation, solid collection and disposal of waste, public transport, electricity, street lighting and public spaces are challenged to deliver such services because of fraud, corruption, maladministration and incompetent appointments to critical posts. This is supported by the Auditor General (AG) who regularly highlights incidents of fraud, corruption and maladministration in local municipalities resulting in a lack of basic service delivery of water, sanitation, refuse removal, housing and electricity (Auditor General Report, 2015-2018). The Auditor General's report (2016-2018) highlights that lack of basic municipal services is attributed mainly to procurement fraud. Mazibuko (2018:np) firmly believes that the administration of public procurement practice has a

challenge in that public procurement fraud or unethical practices, seems to manifest in public-sector procurement. Similarly, Pickette and Pickette (2002:4) cited in Mazibuko, (2018) states that unethical practices or corruption can be likened to economies which go in cycles, and “as booms turns to bust, frauds emerge as big explosion”. Procurement fraud in local municipalities, is widespread and an increasing business risk for government. Padayachee (2014:24) points out that procurement fraud continues to be a persistent and dominant threat facing local government. Similarly, the Auditor General Report (2015-2018) on local government audits outlines the risk of procurement fraud in relation to good governance and ethics. Procurement fraud can be one of the more complex frauds to investigate. The act of perpetration is either by individuals or through collusive arrangements between multiple individuals or organisations (Badenhorst-Weiss, 2012:15).

Procurement fraud in local municipalities affects communities adversely through poor service delivery and is often perpetrated by the most trusted employees and is often difficult to detect and investigate. The Madibeng local municipality rates as one of the top municipalities that is fraught with acts of procurement fraud (Anonymous, 2018:np).

Irregularities of Procurement Fraud at Madibeng Local Municipality

Procurement fraud presents major challenges at Madibeng local municipality resulted in undesirable audit results and high levels of fraud and corruption. Audits conducted by the Auditor General for the period 2015-2018 show irregular procurement processes and irregular expenditure resulting in an increase in procurement fraud at Madibeng local municipality (see Table 1).

Table 1 highlights the different fraud types specific to procurement fraud as per the AG’s report (2015-2018: 44).

Table 1: Irregularities of procurement fraud at Madibeng local municipality.

Allegation	Type of Procurement Fraud	Year	Amount
Irregular Expenditure	Tender Fraud	2015/2017	R28 million
Irregular Expenditure	ICT Tender Fraud	2017/2018	R22 million

Source: (Auditor General Report, 2018:54)

Furthermore, regular reports in the media show serious irregular expenditure of procurement fraud in which losses specific to procurement fraud in the tender process amounted R50 million (seenews24, 2015:np, city pressed,2015:np). Further allegation according to Mashego (2016:np) of tender fraud at the Madibeng local municipality had resulted in an investigation by the Hawks, an elite crime fighting unit, which was investigating two contracts awarded to Tlou integrated tech cc, which didn’t have any construction industry development board grading. The tenders in question were also not advertised as per requirements of the public finance management act (PFMA) and municipal finance management act (MFMA). Tlou integrated tech cc submitted invoices totaling r200 869. 57 for work that was never done. Similarly, Ba Poloborwo construction received payment totaling r2 778 409 -for which there was no proof of work done (Mashego, 2016:np). Various other allegations of fraud in the procurement process had surfaced, for example, ict tender fraud amounting R22 million municipal infrastructure granted and various department of water affairs projects amounting to R100 million (see proper-ty 24,2018:np).

The abuse of the procurement system and irregular awarding of tender had affected negatively the communities in the Madibeng local municipality in which service delivery of basic municipal services were confined. Furthermore, procurement fraud had resulted in severe financial challenges which had impacted negatively on the financial sustainability and delivering of primary services and may result in a repeated in which the municipality was placed under section 139 (1)(b) intervention (place under administration) in 2010-2011 due to poor council oversight, lack of leadership, poor administration and alleged fraud, corruption and maladministration.

Methodology

The article is based qualitative research approach to address the research question. The information required for this article will basically be qualitative as its address non-empirical in nature. This will help the researcher to learn about procurement fraud that is based on a real-life problem and that is in line with the topic. Qualitative research usually initiates with the use of document review to collect information. According to Gordhan (2014:42), a qualitative approach is subjective, value laden, biased and inductive rather than deductive. Qualitative research enables the researcher to gain new insights into a phenome-non as well as to evaluate the effectiveness of existing practices (Kumar, 2014:44). A qualitative research design best suited the aim and purpose of this paper, which will require the collection of in-depth information to explore and understand the modus operandi of perpetrators of procurement fraud. Data will be collected from multiple sources, including relevant national and international literature, pertaining to modus operandi of procurement fraud of perpetrators. Documentary sources will be to develop an understanding around the theory of ‘an analysis of the modus operandi of perpetrators of procurement fraud’.

Conceptual Overview: Procurement Fraud

The Auditor General in his report (2015-2019) outlined a number of procurement fraud cases which was categorized and influenced by different categories, such as loss of revenue and fraudulent disbursement of cash (expenditures). The report further highlighted that the common detection methods were classified by the change in the MO of perpetrators in procurement fraud, who were not only external but included employee’s (Maulidi, 2017:26). Procurement fraud is a complex problem, which covers a plethora of unlawful activities from bid rigging during the pre-contract award segment through to false invoicing in the post-contract award phase. It could be perpetrated by individuals inside and outside an organisation.

The department of Cooperative Governance and Traditional affairs (COGTA) report, (2015-2019) postulates that procurement fraud is challenging to detect, and cases were rarely reported. Therefore, it is difficult to measure the extent of the problem. Furthermore, when procurement fraud is detected, the required resources are channeled into analysing documents to prove procurement fraud or irregularity and look for similarities specific to the MO. According to Labuschagne (2015:53) modus operandi is an approach of identification of procurement fraud committed which could change through time. The identification of procurement fraud is reliant on the collection of evidentiary material to determine the modus operandi and possibly the identity of the perpetrator which remains at the precipice of any documentary analysis in procurement fraud.

This study evaluates the MO of perpetrators in procurement fraud in the Madibeng local municipality. The chapter focuses on the aim of the research, on how modus operandi could be used as an identification technique including the concepts of identification and individualisation and what it entails. The concept of fraud and various theories are discussed including the modus operandi and the factors that influence the modus operandi of perpetrators were also examined. Finally, the chapter examines MO of perpetrators in Madibeng local municipality.

Historical Overview of Modus Operandi in Procurement Fraud

The most important aspect for conducting historical research includes, uncovering the unknown or discovering gaps of previous researchers, answering questions, identifying relationships that the past had to the present, recording and analysing the accomplishments of individuals, and aiding in the understanding of the culture in which we live (Korrapati, 2016:76). Turvey (2013: 311) postulates that the historical events of MO include techniques which can be traced back to 1809 wherein law enforcement officers investigating white collar crime such as procurement fraud believed that understanding the MO of perpetrators who commit procurement fraud was the best way to investigate and ultimately apprehend perpetrators.

The use of MO information has traditionally required that the best investigating officers become living encyclopedias of criminal cases and behaviors. From rudimentary analysis to the use of sophisticated technology in analysing modus operandi information the principles of analysis still remain the same, for example the manual processing of MO entails the systematic manual analysis of daily reports of serious procurement frauds by way of:

- *Determining the location;*
- *Time;*
- *Unique characteristics;*
- *Similarities to other criminal events;*
- *Various significant facts that may help to identify either a criminal, or the existence of a pattern of criminal activity.*

Technology, however, has allowed for the use of sophisticated software such as Notebook analysis, data correlation, link analysis and frequency charting to plot, map and link perpetrators to a specific time, place, date and to multiple procurement fraud types.

Conceptualisation of Modus Operandi in Procurement Fraud

According to Turvey (2013:145), MO is a Latin term that means a method of identification which refers to the way procurement fraud is committed. The examination and storage of a perpetrator's MO according to Labuschagne (2015:125) have traditionally been relevant for the following reasons:

- Analysing linkage of unsolved cases by MO.
- Data collection of evidence to identify perpetrator's MO with procurement frauds committed or unsolved cases.
- Routine comparison of arrestee MO with the MO evident in unsolved cases.
- Development of investigative leads and suspect identity in unsolved cases by accumulating MO information.
- Offender prioritisation and elimination.
- Clearance of repeated procurement fraud cases.
- Buys, De Beer and Dick (1996:141) share similar views with Turvey (2013: 310) and state that MO data might be utilised as follows:
 - As a technique for perpetrator identification, to bring about the identification and detection of criminals,
 - As an aid in the prevention of procurement fraud,
 - As an aid in the questioning of suspects, and
 - In the place of investigating personnel and resources in places where observation is required.

Douglas, Burgess and Ressler (2013: 20) add that the actions taken by the perpetrator during the perpetration of a procurement fraud is referred to as the MO. The authors further argue that MO is a set of learned behaviors that perpetrators developed and persist with it because it works, however they also acknowledge that it was dynamic and malleable (Douglas *et al.* 2013: 26). They insist that, in any criminal career, no matter what the circumstances, the MO would evolve with the perpetrator. A significant element of MO in procurement fraud cases, generally lay in manipulating and misrepresenting documentary records, quite often through forgery or counterfeiting (Padgett, 2015:49). The author also suggest that knowledge of the MO will be beneficial to investigators, as it will serve a useful reference point about where to focus attention. Padgett (2015: 199) believes that the following examples of MO information in procurement fraud analysis may include the following:

- Place, date and time of the procurement fraud;
- Location of offence;
- Age of the victim;
- Number of offenders;
- Amount of planning before a procurement fraud;
- Type of targets;
- Techniques and instruments to be used;
- Methods of committing the procurement fraud;
- Language used;

- Nature and extent of precautionary acts;
- Type of transportation used to and from the procurement fraud scene;
- Items taken from the victim or procurement fraud scene(s).

Price Waterhouse Coppers Global Economic Crime Survey (2016:12), advance that there are several different types of procurement fraud. Some of the more common internal fraud according to the report include:

Payments:

When two parties involved in a transaction exchange money that was not part of the transaction itself, the exchange is a side payment. It is typically made to induce the recipient to take part in the transaction (Transparency International, 2002:36). Examples of such payments include:

- False charging of personal expenses;
- Double payments against single transaction;
- Inclusion of dummy workers in wage bill;
- False credit to various personal accounts for withdrawal later;
- The method used to commit the fraud; financial documents falsified by the perpetrator to conceal the fraud;
- Details of suppliers over changing for goods in collusion with employees;
- Details of payments effected with no supporting documents and details of personal purchases made on the business account (Transparency International, 2002:36)

Manipulation of accounts:

Manipulating accounts means bending the rules to alter the meaning of the financial statements to mislead investors and other users of this information. According to Transparency International, (2002:36) examples of manipulating accounts include:

- Under valuation of stock;
- Over valuation of stock;
- Fictitious purchase;
- Wrong allocation of revenue and capital expenditure;
- Recording next year's revenue as income for current period as income for current period, overstatement of profit or understatement of profit and over or under invoicing.

Misappropriation of goods & services:

Transparency International (2002:37) explains misappropriation of assets as the actual theft of an entity's assets. This can be accomplished by common theft or the following, namely; causing an organization to pay for goods and services not actually received (for example fictitious vendors or employees. The report further highlights internal fraud which can be divided into two separate categories, namely; fraudulent financial reporting and asset misappropriation. Misappropriation of assets involves the actual theft of an entity's assets. This can be accomplished by common theft or the following:

- Causing an organization to pay for goods and services not actually received (for example fictitious vendors or employees);
- Using an organization's assets for personal use;
- Embezzling receipts.
 - Omitting to enter goods received;
 - Recording less quantity than received;
 - Recording excess issue than actually issued;
- Procurement of low-quality goods (Transparency International, 202:37).

According to Van Heerden (1985:10) cited in Labuschagne (2015:288), MO is “habits and techniques of criminals who have become stereotyped”. He views it as a “routine mode of conduct in which individualised techniques are employed”. MO is unbundled as a combination of criminals’ habits, techniques and strange behavioural patterns, which they were inclined to follow and from which they seldom deviate (Van Rooyen, 2007:15). The habits, techniques and behavioral patterns of perpetrators in procurement fraud according to the AG’s reports (2016/2018) and the department of Corporate Governance and Traditional Affairs report (COGTA, 2016/2018) highlighted the following:

- Conflict of interest situation;
- Nonexistent company whose invoice is presented by an official involved in purchase process;
- Excess purchases with a view to divert for personal use;
- Split purchases to evade competitive bidding in exchange of favours;
- Extortion;
- Nepotism;
- Tax or duty evasion through false representation involving negligence of government officials.

The value in understanding the habits and techniques of perpetrators in procurement fraud is vital because it provides insight to the investigator on the MO. MO information of the perpetrator is invaluable in investigating procurement fraud.

The Value of Perpetrator Modus Operandi in Procurement Fraud

Modus operandi information and in particular records contain valuable information relevant to the method of operation of known offenders, and the method used in past procurement frauds by unidentified criminals (Hess & Orthman, 2013:324 and Rustiarini, Nurkholis, & Andayani, 2019:36, Marais and Van Rooyen, 1990:34 and Van der Westhuizen, 1996:33). Turvey (2013:407) and Rustiarini, Nurkholis, and Andayani, (2019:36) are adamant that modus operandi should be collected, stored, and examined, whether on arrest cards or in computer databases. The authors also state that the advantages of recording modus operandi information include:

- Linking of unsolved procurement frauds;
- Developing of investigative leads;
- Prioritizing perpetrator identification or elimination of perpetrators;
- Clearing of unsolved cases.

Casey (2011:256) states that the linking of procurement fraud cases using documented or recorded behavioral modus operandi information should not be underestimated. He argues that that documented behavioural modus operandi information is critical in the absence of physical evidence and witness statements.

Examples of procurement fraud

Contract bid rigging: - Several parties compete for a contract – each taking a turn at being the lowest bidder and the lowest bidder usually wins the contract. Examples of Contract bid rigging include:

Grants: - An individual makes false statements on a grant application or fails to follow through with the conditions for receiving the grant. For example:

The issuing of false statements and claims wherein contractors or suppliers can submit false information about their employee credentials and experience, invoice for goods and services that are not delivered, charge for higher quality items than are provided, submit false or defective bonds, or make a variety of other false statements and claims.

Travel voucher: - Municipal employees misuse their travel voucher for purposes other than travel or in violation of the travel voucher use requirements. For example:

Imprest fund abuse: Replenished “imprest funds” (also known as “operating accounts” or “petty cash funds”) can be embezzled or used improperly by contractor employees. The employees might submit false or inflated requests for reimbursement of expenses, use the fund for personal or unauthorized expenditures, or “double-dip” by submitting reimbursement both to the fund and accounts payable.

Unnecessary purchases:

Unnecessary, excessive or inappropriate purchases of goods or services, or unnecessary repairs, might indicate procurement fraud or purchases for personal use or resale.

Small-acquisition purchase cards: - Municipal employees can make some purchases on a purchase voucher, if the expense does not exceed a certain threshold. It's fraudulent to use that card to break a large purchase into multiple small payments thus avoiding the bidding process. For example:

Purchases for personal use or resale: An employees can purchase items through his agency or company that are intended for his personal use, such as tools, personal computers, or automobile parts, or that the employee intends to resell as part of a side business, such as computer parts or inventory

Procurement and acquisitions: - This is a "catch-all" category for fraud ranging from kickbacks and pass-thru contracts to large businesses that continue to bid on work they were eligible to compete for as small businesses. For example:

Leaking of bid information: Procurement personnel can leak bid information from other bidders, or confidential pre-bid information, to a favored bidder to give it an unfair advantage in the bidding process. Such schemes usually occur as the result of procurement fraud.

Manipulation of bids: A procurement employee, probably as the result of procurement fraud, can manipulate the bidding process in a number of ways to benefit a favored contractor or supplier. These include leaking information regarding competing bids, accepting late bids, changing bids, re-bidding work and so on. A contractor can also submit a "low" bid with the understanding that the corrupt procurement official will approve later contract amendments and price increases.

Fictitious vendor: In a weakly controlled environment, an employee with procurement

responsibilities, or in accounts payable, or an outsider, can submit bills from a non-existent vendor. Normally fictitious vendors claim to provide services or consumables, rather than goods or works that can be verified. Dishonest bidders also can submit "bids" from fictitious bidders as part of bid rigging schemes. Phantom vending schemes occur more often than thought and can be detected relatively easily through automated proactive fraud detection programs.

Product substitution: A supplier or contractor can substitute products or materials of lesser quality than specified in the contract, or use counterfeit, defective or used parts, in order to increase profits or comply with contract time schedules. The dishonest supplier might give gifts or favors to inspectors or pay kickbacks to contracting officials to facilitate the scheme and will submit false documentation to conceal it.

Common example of procurement fraud:

Bribes and kickbacks: A bribe is usually defined as the giving or receiving of a "thing of value" to corruptly influence the actions of another, most commonly to influence a contract award or the execution of a contract. A "kickback" is a bribe paid by the contractor after it is paid. Most bribes in exchange for large contract awards in international development projects are paid as kickbacks, usually 5%-20% of the contract value.

Corrupt payment: The bribe need not be in money or cash, and often is not. Any benefit given or received with the intent to corruptly influence the recipient can be a bribe.

"Things of value" that have been given and received as bribes include:

- Expensive gifts, free travel and lavish entertainment;
- "Loans," whether or not repaid;
- Use of credit cards;
- Sexual favors (hiring of prostitutes, etc.);
- Overpaying for purchases, e.g., paying R20,000 for a car worth R5,000;
- Cash;
- Fees and commissions, even if recipient allegedly provided services to the payer;
- Hidden interests in business transactions.

Often the payments follow the general sequence outlined above, with the amount and form of payments becoming more significant and incriminating as the scheme progresses.

Corrupt influence:

- Corrupt influence often is reflected as, among other things:
- Qualifying an unqualified or untested company to bid or be a vendor;
- Improper or non-competitive contract awards;
- Paying too much for goods or services;
- Buying too much of an item, or buying inappropriate items;
- Continued acceptance of low quality or non-compliant goods or services.

As procurement fraud continues, the abuses often turn into fraud, such as fictitious invoices, with the parties conspiring to split the profits. Eventually the excesses of the scheme leads to its detection, as the mounting evidence of favorable treatment and fraud, and the conspicuous expenditures of the conspirators, call attention to their behavior.

Public Procurement Challenges in South Africa

It is important to note that SCM is an integral part of procurement in the South African public sector. Therefore, it is used as a tool for the management of public procurement practices. However, despite the employment of SCM as a strategic tool, public procurement in South Africa still faces enormous predicaments. These include, among others:

- Lack of proper knowledge, skills and capacity;
- Non-compliance with SCM policy and regulations;
- Journal of transport and supply chain management;
- Inadequate planning and the linking of demand to the budget;
- Accountability, fraud and corruption;
- Inadequate monitoring and evaluation of SCM;
- Unethical behaviour;
- too much decentralisation of the procurement system;
- Ineffectiveness of the black economic empowerment (bee) policy.

Lack of proper knowledge, skills and capacity

To fully achieve SCM objectives, the National Treasury provides support by facilitating the development of appropriate training materials to government departments, municipalities and municipal entities (National Treasury, 2005). However, the shortage of skills has been a re-concurrent theme in public discussion. According to Sheoraj (2007:25), skills and capacity shortages have been identified as the single greatest impediment to the success of public procurement in South Africa. Adequate capacity in the form of appropriate structures with fully skilled and professional SCM personnel is a key success factor for proper SCM implementation. In some government entities, the quality of SCM personnel's skills and ability are well below standard. Migiro and Ambe (2008:48) assert that many SCM actors in the South African public sphere have attended a number of training workshops on SCM, but they still lack the appropriate knowledge for proper implementation. McCarthy (2006:28) contends that there is a lack of capacity and knowledge by SCM actors to handle procurement processes that have led to bad governance. The South African government embarks on programmes that educate practitioners, but implementation of its programmes always falls short.

Non-compliance with policies and regulations

SCM is guided by a number of related policies and regulations (National Treasury, 2005:91). Compliance with these policies and regulations is a problem. As indicated by Mathee (2006:67), some of the practices relating to non-compliance with the rules and procedures relate to the tendency not to utilise a competitive process for both quotations and bids, and incorrect utilisation of the preference points system. Van Zyl (2006:96) also asserts that there is a lack of appropriate bid committees; use of unqualified suppliers, passing over of bids for incorrect reasons; utilisation of the incorrect procurement process in respect of the thresholds; extensions of validity periods; and incorrect utilisation of the limited bidding process. Furthermore, Ambe and Badenhorst-Weiss (2011b) noted that there are inadequate controls and procedures for the handling of bids; appointment of bid committee members not aligned to policy requirements; and insufficient motivation for deviations from SCM procedures.

Inadequate planning and linking demand to the budget

Demand management is integral to the SCM process. It defines the decision-making process that allows departments to procure at the right time, at the right place and at the right cost. However, many government entities are still faced with the challenges of improper planning and linking demand to budget (Ambe & Badenhorst-Weiss, 2011a). Cost-effective procurement depends on a specialist's skills to ensure that buying requirements are reliably determined, appropriate contract strategies are developed, contracts are well managed, and opportunities are seized to secure the best deals at the right time and at the right price. The importance of drawing up accurate and realistic strategic plans cannot be overestimated. At times there is an absence of coherent plans. Some government entities cannot properly quantify the needs of those requiring their services or properly estimate costs, nor can they accurately track, control or report on expenditure (Luyt, 2008:65). Luyt (2008:22) indicates that there is a need to monitor the delivery of services properly to ensure that scarce resources are efficiently and effectively procured. Poor planning and budgeting have also affected the implementation of SCM. It is therefore vital that SCM practitioners adequately link demand planning to budget.

Accountability, fraud and corruption

Accountability constitutes a central pillar to public procurement (Soudry, 2007:54). Without transparent and accountable systems, the vast resources channelled through public procurement systems run the danger of being entangled with increased corruption and misuse of funds (Jeppesen, 2010:100). According to Mahlaba (2004:77), fraud and corruption cost South African taxpayers hundreds of millions of rand each year. Over the last few years, the impact of fraud has led to the promulgation of special legislation and improvement in existing legislation that led to the creation, among others, of the Directorate of Special Operations, commonly known as the Scorpions, the Asset Forfeiture Unit, the Public Protector, the Special Investigation Unit, Commercial Crime Units, Internal Audit Units, Special Investigation Units within departments, and the appointment of forensic consultants (Mahlaba, 2004:91). According to Boateng (2008:67), since 1994, South Africa has enjoyed unprecedented social and infrastructural programmes. Yet, the majority of people who had hoped freedom would bring with it relative socio-economic liberation and improvement are feeling increasingly bitter towards government over issues that include a lack of perceived quality of governance, service delivery failure, fraud and corruption in some spheres of the economy and disillusionment with empowerment policies.

The Public Service Commission Committee (2011) indicated that a total of 7 766 corruption cases had been reported through the National Anti-Corruption Hotline since its inception in September 2004 up till June 2010. De Lange (2011) notes that taxpayers were fleeced of R30 billion (3.675 billion USD). Corruption, incompetence and negligence by public servants were 252 Journal of Transport and Supply Chain Management | 2012 to be blamed (De Lange, 2011:78). About 20 per cent of government's procurement budget alone 'went down the drain each year. This was because officials had their fingers in the till, overpaid for products and services or failed to monitor how money was spent' (De Lange, 2011:39). Among government entities probed for procurement irregularities was the Tshwane Metro where about 65 municipal officials were investigated for striking business deals worth about R185 million with their own Council (Pauw, 2011:102).

The National and Provincial governments and their entities notched up R21 billion in irregular expenditure in 2010, a 62% rise (R13 billion) over the previous year (De Lange, 2011:88). The auditor general highlighted weaknesses in SCM, controls over information technology, human resource management, and capital assets and performance reporting during a briefing to Parliament's Standing Committee on Public Account (Smart Procurement, 2011:54). Hence, there is an urgent need to rethink innovative ways of curbing corruption and some other administrative malpractices within South African spheres of government. To fight the scourge of maladministration, mismanagement of finances, fraud and corruption, government needs to strengthen and review existing internal control systems to detect deficiencies.

Inadequate measures for monitoring and evaluation of SCM

Effective policymaking requires information on whether governments are doing things right and whether they achieve the results intended (Acevedo, Rivera, Lima & Hwang, 2010:97). Strong monitoring and evaluation systems provide the means to compile and integrate this valuable information into the policy cycle, thus providing the basis for sound governance and accountable public policies (Acevedo *et al.*, 2010:33). Inadequate monitoring and evaluation is linked to the absence or the poor presence of a control environment, and the government entities are placed in a difficult

position to give effect to or implement SCM as required by the policy. Hence, deviations or non-compliance goes undetected or is identified after the fact. According to a Business Day report (2011:54), procurement actors in government have spent millions of rand in ways that contravened laws and regulations. The national and provincial governments and their entities have notched irregular, unauthorised, fruitless and wasteful expenditures that contravene laws and regulations. There is lack of proper monitoring and evaluation as required (Stemele, 2009:76).

Unethical behaviour

Ethics is the paper of moral judgements and right and wrong conduct. Ethics and conflict of interest greatly affect SCM implementation. Enormous power is wielded by some chief financial officers but there is also a lack of proper consultation with other senior officials. While the National Treasury's guide to accounting officers prescribes a standard approach towards SCM procedure, in many instances there is lack of compliance and application of the guidelines. This has resulted in differentiation in approaches and a lack of standardisation. According to McCarthy (2006:90), the completeness of tender documents in many municipalities is difficult to verify.

Too much decentralisation of the procurement system

In South Africa, government procurement of own or local requirements (materials, equipment and services) is to a large extent decentralised to departments, provinces and municipalities. If one takes the number of cases of tender fraud and lack of services on all levels of government into account one should ask oneself whether these parties have the knowledge and/or the intention to get the best value for taxpayers' money. Arguments for a larger extent of centralisation of procurement to knowledgeable, accountable procurement officials/agents or procurement consortiums could be put forward. 'Centralization leverages scales to reduce costs. Decentralisation relies on local knowledge to build relationships' (Fawcett, Ellram & Ogden, 2007:14). Centralisation offers advantages such as leverage due to volumes, reduction of duplication of purchasing effort, better control and development of specialised expertise of purchasing personnel (Handfield, Monczka, Guinipero & Patterson, 2011:64). On the other hand, decentralisation often leads to better responsiveness to purchasing needs, a better understanding of unique local needs, and is closer to suppliers and taking ownership of decisions that impact on one's own budget (Handfield *et al.* 2011:89). However, if the advantages of centralisation are to be realised, efficient contract management and supplier relationship management is a pre-condition. The schoolbook saga in various provinces of South Africa in 2012, where textbooks had not been delivered to schools by the third term of the school year is an example of what can happen without proper contract management.

Ineffectiveness of broad-based black economic empowerment

The South African government adopted the provision of BEE to empower all historically disadvantaged people rather than only a small group of black investors. To this end, it adopted the Broad-Based Black Economic Empowerment Act (BBBEEA), which calls for expanded opportunities for workers and smaller enterprises as well as more representative ownership and management. Current BEE provisions have, however, in many instances failed to ensure a broad-based approach, instead imposing significant costs on the economy without supporting employment creation or growth. The present BEE model remains excessively focused on transactions that involve existing assets and which benefit a relatively small number of individuals. The following shortcomings have emerged in the implementation of BEE: First, ownership and senior management issues receive disproportionate emphasis. The unintended consequences of this trend include 'fronting', speculation and tender abuse. Secondly, the regulations do not adequately incentivise employment creation, support for small enterprises and local procurement.

The preferential procurement regulations aggravate this situation by privileging ownership over local production. Finally, the BBBEE regulations penalise public entities as suppliers. The democratic state owns public entities on behalf of its people, yet the regulations do not count them as 'black empowered' (Zuma, 2009:43). Procurement fraud can be difficult to detect as well as complex to investigate. Vigilance against procurement fraud is crucial for ensuring your organisation gets the right results from its procurement. It's also essential to preserving stakeholder trust, company reputation and preventing unnecessary overspend.

Fraud Triangle Theory

According to the theory of Donald Cressey's (1953:60 cited in Turvey, 2013:88) for an act of procurement fraud to occur there must be a convergence of three elements, namely offender motivation (pressure), opportunity and

rationalisation (also see the fraud diamond theory (FDT), strain theory and the institutional theory of moral collapse). Figure 1 depicts the fraud triangle theory.

Figure 1: The Fraud Triangle



Source: Donald Cressey (cited in Turvey, 2013:88)

The fraud triangle provides a useful framework for organizations to analyse their vulnerability to fraud and unethical behavior. If companies focused on preventing each factor, they could minimise instances of fraud and other forms of unethical behavior. Further, the theory is useful in understanding who is more likely to commit fraud and the circumstances under which fraud was more probable (Korrapati, 2016:111). This could help organizations focus their anti-fraud policies in targeted areas. For example, fraud is more likely to occur in circumstances when there are inadequate or ineffective internal controls, such as in the early stages of development of a project or process when controls are still being formulated specific to the procurement cycle or where there are only limited controls. Lack of resources could also present a risk affecting, for example, the integrity of controls in the procurement cycle if duties are not appropriately segregated or allowing insufficient monitoring of transactions or contracts in the bidding process (Cressey 1953:60, Turvey, 2013:88). This, however, could be mitigated by an adequately staffed internal audit function and forensic function in organisations and an understanding of the fraud triangle and what motivates fraud and in particular procurement fraud to be perpetrated.

The Fraud Triangle: Pressure

Cressey (1953:66) and, Turvey (2013:90) states that pressure/motivation to commit fraud is borne out of various situational conditions which may cause individuals to perceive pressure, whether related to work or personal. Examples of such perceived pressure include:

- Occupational pressure;
- External pressure;
- Economic pressure and;
- Social pressure.

Occupational pressure

Is a form of pressure commonly found in the work and difficult to avoid? This pressure comes from inside the organization or external parties who are still affiliated with the organization. Internal pressure comes from the superiors, while external pressure comes from politicians or parliament members who have dominance of power ((Rustiarini, Nurkholis, & Andayani, 2019:42). When pressure comes from internal organizations, fraud can be engineered by the organization's leaders and pushed from the top down, using powerful mechanisms such as obedience to authority (Milgram 1963:99, cited in Labuschagne 2015:263). In this situation, procurement officials are faced with a dilemma,

whether to refuse or follow the leader's instructions that lead to fraudulent actions. Therefore, the Human resource forensic and audit function in organisations are crucial. The relevant policies on ethics, whistleblowing amongst others must be developed to protect employees from such pressures. Furthermore, such policies will protect procurement official from not complying with illegal instructions and avoid dismissal.

There are three steps in this process. First, the initial decision to commit procurement fraud comes from the organization's top leader. Secondly, procurement fraud process began through the leader's instructions to subordinates, as well as the rationalization (neutralization) to justify this behavior. Third, procurement fraud eventually becomes a normal behavior, even for all organization members. An individual is more likely to be corrupt if others are corrupt, and vice versa. The more corrupt people there are, the less of a probability that they will be caught, the less of the penalty will incur, and the less of the moral costs, or negative stigma will they feel (Caulfield & Steckler, 2014:56). Finally, procurement fraud practices seem to have been institutionalized in the organization system and has become an integral part of organization activities (Brytting, Minogue & Morino, 2011:45).

External pressure

Comes from politicians or businesspersons. In this case, the public procurement process/cycle is misused through collusion, fraudulent behaviour and procurement fraud for political or business purposes. For example, bureaucrats (executive) as the power holder of capital and financial management will interact with politicians (legislative) when they are planning the procurement budget. Guile (2013:66) asserts that politicians or business executives often intervene in the budget allocations for popular programs (not priority programs) which provide political or business benefits for personal gain. Procurement officials are also under pressured to give contracts to companies where politicians have a vested interest.

The power and opportunistic behavior of politicians which disguised in discretionary power often force the bureaucrats to obedience on "illegal instruction" (Akech, 2005:15) which leads to fraudulent behavior. Finally, the elected politicians that determine the career of bureaucrats, including whether they get promoted or fired (Johnston, 2005:96). Besides the poor moral tone set at the top, the behavior of coworkers can also influence employees' ethical conduct. For example, procurement fraud is perpetrated by several employees within the same organization all responsible for different functions within the procurement process. However, fundamental in the process is collusion amongst perpetrators. Tan (2013:14) postulates that an employee is more likely to commit fraudulent acts or collude with others if the other co-workers also engage in misconduct. One example of collusive behavior in procurement fraud is 'bid rigging'.

Bid rigging in public procurement are fraud schemes which involve agreement among contractors in the bidding process. In local municipality, bid rigging is prohibited by section 4(2)(d) of the Competition Act 2010. The Local municipality Competition Commission has been given wide-ranging investigation powers, including to search and obtain documents in the gathering of information and evidence (Kenney & McCafferty, 2016:78). According to the PWC Global Economic Crime Survey (2016:25), five basic bid rigging schemes in public procurement exist, namely:

Bid Suppression. Where a group of contractors participating in a particular tender agree among themselves not to bid to ensure the pre-agreed contractor wins. This is done by declining from bidding, a form of conspiracy to protect their monopoly. Sometimes, they prevent outside contractors from bidding. Forceful measures, threats and violence are used to deter competition.

Bid rotation. This is where two or more bidding companies collude and share the bidding by taking turns to be the winning bidder. The modus operandi is pre-arranged by being lowest bidder or by withdrawing from bidding. All the participating contractors in this scheme share information illegally to control the price, percentage of the profits, or be hired as subcontractor, normally workable in a stable and understanding community of bidders Market Division. This is where contractors agree to bid and divide markets based on product, customer, service or geographical areas. Contractors refrain from competing with each other but have equal chance to win the bidding through collusive measures such as submitting complementary bids as agreed by all parties.

Complementary bidding or also known as protective, or courtesy bids, are merely to give the appearance of a genuine bid but are actually intended to fail. The motive is to act as a vehicle for another contractor to win the bid. The contractors would submit bids that are too high to be accepted by buyers to ensure the preselected bidder is chosen. In exchange, the winning contractor may share the profit, be hired as sub-contractor or allowed to win another bid.

A phantom bidder. Involves contractors creating a dummy company and submitting a variety of bids on one contract. Bidding is placed where the bidder does not intend to win but is attempting to raise the price of the contract being offered. A deterrence to bid rigging is to set prequalification's by requiring companies or contractors to submit audited financial statements and to conduct a thorough and an honest due diligence on suspicious rigging schemes. Some corrupt procurement officials are vulnerable to procurement fraud due to power, opportunity, pressure and rationalisation factors. They can facilitate bid suppression efforts (for example, by disqualifying other legitimate bidders during the bidding process) and take a cut of the profits as bribes from the conspirators. The public sector needs to be aware of these tactics and consider actively reviewing existing internal control policies, undertake risk assessment review, update the detection mechanism and put best practices in place. But it is more effective if the committees and board members possess high integrity and the company or municipality has sound governance principles.

Those who handle procurement processes can take steps to reduce the likelihood of wrongdoing. The consequences of procurement fraud, especially bid rigging, may not only be about high costs, taxpayers money will be wasted and diminution of value, but may also imperil personal safety, image and organisational capabilities.

Economic pressure

Is a catalyst and contributes to fraudulent behavior. Cressey cited in Turvey (2013:155) and OECD (2007:23) state that officials in the procurement environment participates in acts of fraud because they consider that their remuneration is not in accordance with their work. Therefore, bureaucrats who accept less wages expect to receive compensation through some form of malpractice. This is further supported by Cieslewicz (2012:78) who posits that in developing countries, a civil servant will be more vulnerable to procurement fraud if the legitimate income is low, or not commensurate with their position and responsibilities (Mahmood, 2005:94). Other factors show that the perpetrators of procurement fraud arise because of difficulties in making home loans and credit card commitments or fulfilling a luxurious lifestyle and gambling addiction (Gibson, 2013:45-63).

Social pressure

This form of pressure manifest from the surrounding environment. In this case, fraudulent behavior is not only to obtain financial benefits, but because employees have connections or interests with suppliers, friendships, or family ties (Caulfield & Steckler, 2014:99). This personal connection may be strong and influences on procurement officials' actions (OECD, 2007:112). Other motivations include employees wanting to get higher positions, promotion, or recognition from certain parties if they are able to fulfill the demands of certain parties to win the tender (OECD, 2007:120). The pressure/motivation to commit fraud comprises of a number of factors, for example, financial, emotional and lifestyle challenges amongst other;

Financial;

- Not being able to pay one's debts, nor admit it to one's employer, family, or friends,
- Credit cards,
- Business reversals.

Emotional;

- Fear of loss of status,
- Physical isolation,
- Difficulties in employer-employee relations,
- Divorce, extramarital affairs, problems with children.

Lifestyle;

- Status gaining,
- Drug/alcohol addiction,
- Gambling.

Pressure can be real or imagined;

Financial debts;

Health care and

Family problems.

The Fraud Triangle: Opportunity

Opportunities for procurement fraud will be increased when converged in space and time. This condition is emphasised that fraud opportunity is formed by the surrounding environment which is used by potential actors to commit procurement fraud (Mahmood, 2005:88). Schreck, (2017:90) states that in public procurement, governments often issue public policies, statutory legislation and apply stringent rules, however the opportunities of fraud still persist. The author further adds that rational individuals will be interested in profitable opportunity so everyone can become a fraudulent perpetrator. According to Tukamuhabwa (2012:96) excessively regulated systems actually increase fraud because some individuals continue to ignore or violate applicable rules. The opportunities available cannot be separated from the accountability system of the organization, both internal and external (Mahmood, 2005:91). Hessami (2014:67) mentioned that lack of accountability contributed to the high level of procurement fraud. Internal accountability includes the organization's internal control system, code of ethics, employee recruitment processes, fraud detection procedures, auditing processes, and sanctions for fraud committed.

Theoretically, higher penalties can reduce the number of fraudulent actions, although on the other hand it actually causes officials in the legal field to demand higher bribes (Mahmood, 2005:88). Several conditions affect the external accountability system, such as the existence of a free press, dynamic and proactive civil society, and an independent judiciary. According to OECD (2016:167) if the mechanism can be implemented effectively, this is not only expected to reduce the potential of public officials to commit fraud, but also to recognize some "blind spots" that have not been detected by the organization's internal auditors.

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The public officials and politicians are assumed to be more responsive to their citizens. Local politicians and bureaucrats better understand their specific constituents needs. On the other hand, it must be recognized that there are greater opportunities and fewer obstacles to fraud in the local procurement (Morales, 2014:26). In some cases, weak government capacity such as ineffective audit functions and forensic investigation capacity, limited bureaucrats who under-stand the field of law, low human resource capacity in the information and technology field provides an ideal opportunity for fraud to be perpetrated.(OECD, 2016:120). Tukamuhabwa (2012:96) argues that in developing countries, procurement fraud among government procurement officials was rife because the law had many loopholes and technicalities and weak enforcement of the rule of law by officials. Morales (2014:26) further stresses that government policies and regulations was a 'freeway' to fraud and procurement fraud, because it creates opportunities for public officials to exercise discretionary powers. The opportunity to commit procurement fraud is also inseparable from the weak internal controlled system in the procurement process. Therefore, opportunity presents itself because organization fail to evaluate on regular basis whether employees are complying with ethical rules and procurement policies (Hessami, 2014:76). The lack of effective ongoing evaluations and the absence of management review caused the fraudulent activities to proliferate throughout the procurement process. Other causes namely organization failure to adopt some common controlled activities, such as segregation of duties, mandatory job rotation, or vacation for employees holding fraud and procurement fraud prone positions (Tan, 2013:56).

According to OECD (2016:135) the common opportunities that enable procurement fraud include:

Lack of internal controls;

Failure to enforce controls;

Excessive trust in key employees;

Incompetent supervisory personnel;

Inattention to details;

Inadequate staff.

OECD (2016:136) states that internal controls that may be lacking or un-enforced include:

Authorisation procedures;

Clear lines of authority;

Adequate supervision;

Adequate documents and records;

A system to safeguard assets;

Independent checks on performance;

Separation of duties.

The Fraud Triangle: Rationalisation

Every individual who commits fraud will experience dissonance. Dissonance is a negative felt by individuals when they have two different cognitions, for example ideas, beliefs and opinions (Aronson, 1969:np, Turvey, 2013:63). Since dissonance is an unpleasant condition, the individual will try to reduce it through rationalization. In the fraud and procurement fraud context, the literature on rationalization shows a symmetrical relationship between rationalization and individuals' actual behavior (Hessami, 2014:111). This means that the higher the individual's fraudulent behavior, the higher the individual's efforts to rationalize that the action was justifiable. Some reasons that were usually used by perpetrators to justify their actions, include "other people did that", "no one losses", or "the organization could buy it again" (Klenowski, 2012:98).

Another statement commonly used is "it was not procurement fraud", or "it was for a good purpose" (Hessami, 2014:123). Interestingly perpetrators of fraud and procurement fraud tended not to see themselves as perpetrators (fraudsters/corruptors). For example, individuals convicted of white-collar crime such as procurement fraud tended to recognised their wrong behavior but considered it not as a criminal act (Dhami, 2007:63). In organizations, leaders who instruct subordinates to commit fraud will try to convince their subordinates that fraudulent behavior was an acceptable situation. As a result, when subordinates see their leader involved in fraudulent behavior, they thought that if the action was not accepted, "the boss certainly won't do it." pressure could also come from colleagues who had the same interests or goal as the leader. They will use some reasons such as, "everyone has it," "this was not a big problem", or "this was temporary" (Albrecht *et al.*, 2015:25; Mayhew & Murphy, 2014:36).

In some developing countries, the employees rationalize their fraudulent behavior with low salaries, weak organizational governance and indecisive laws and company policies. Other reasons such as weak accountability, the existence of culture and organizational structures that were per-missive to fraudulent or procurement fraud (Budiman *et al.*, 2013:76). Finally, Morales (2014:36) points out that fraudulent behavior is an acceptable and common action in public organization. It is even said that the practice of fraud is a routine activity embedded in an organizational system which according to Morales (2014:36) allows perpetrators to justify their illegal behavior;

- The only way they can commit fraud and maintain self-image as principled; individuals is to create rationalizations;
- Employees, vendor, others justify fraud;
- Rationalization is a form of denial;
- The person is not accepting reality;
- Rationalization is the hardest area for management to influence or control.

The fraud triangle provides valuable insight in explaining the motivation behind an individual's decision to commit fraud. However, Wolfe and Hermanson, (2004:84) extend on the fraud triangle and introduces the fraud diamond theory in which the authors add an additional element, namely 'capability' to the existing three elements embedded in the fraud triangle.

According to The Fraud Diamond theory, there are four elements that fraud causes, namely pressure/motivation, opportunity, rationalization, and capability. Capability is an additional element complimenting the other three elements found in the fraud triangle (see point 10.1, 10.2, and 10.3). Figure 2 highlights the fraud diamond theory.

Figure 2: Fraud Diamond Theory



Source: Donald Cressey (1953:25)

Fraud Diamond Theory: Capability

The concept of capability is a modification of the opportunity construct in the fraud triangle theory. The following were characteristics of capability in fraudulent action, particularly in public procurement. First, the individual's position/function in the organization gives them the chance to exploit fraud opportunities which no one else have (Wolfe & Hermanson, 2004:84). Procurement fraud occurs when individuals have dominant power, and there is no adequate system of accountability (Mahmood, 2005:41). In the procurement process, the opportunity to commit fraud is only known by employees who have authority such as position, function and official access in procurement activities. The employee could arrange the tender process, determine the vendor who will accept the contract, and determine the number and amount of goods/services needed. In fact, procurement official can help win a contract of a company that has affiliations with public officials or certain politicians. This position or function can facilitate a procurement official to commit fraud in order to gain power and wealth (OECD, 2007:101).

Secondly, individuals must have more intellectual capacity than others. This capability will help them to detect available opportunities, as well as be creative in exploiting the weaknesses of the internal controlled system (Wolfe & Hermanson, 2004:12). Individuals who have more intellectual intelligence will have a good understanding of procurement regulations and make it possible to engage in fraud. In the procurement context, intellectual capacity is not only reflected on an education degree but also the certification that proves that they have procurement competence. The Association of Certified Fraud examiners (ACFE) states that 51% of individuals who commit procurement fraud are educated individuals, at least have a bachelor's degree. Morales (2014:39) states that third, the capability also means that the individual must have high self-confidence that the fraud will not be detected, unlikely to be caught, or not severely punished even if they were caught. This confidence will make individuals weigh the benefits and the costs of giving and taking bribes. Hessami (2014:129) emphasised that if individuals believed that benefits were perceivably higher than the sanctions, it was difficult to combat the fraudulent desire to commit unlawful acts. The consequence is the individual will not hesitate to engage in fraud (Wolfe & Hermanson, 2004:06).

Fourth, fraud perpetrators must have coercive ability to convince or even force others to commit fraud. A procurement official with a very persuasive personality is certainly able to convince nine (9) others to go along with fraud or to simply looked the other way (Van Graan & Budhram, 2015:68). Fifth, a successful fraudster lies effectively and consistently. They must have effective misrepresentation to lie, including being able to display these lies consistently.

Sixth, the perpetrator must have good immunity to managing thoughts and dealing with stress (Wolfe & Hermanson, 2004:15). The procurement department usually consists of several competencies. The decision-making process is based on the approval of the procurement member. In this condition, fraudsters must have the ability to convince others to follow their instructions. Individuals who hide fraud must not only rationalize their actions, but also must prepare mentally, mind, feeling, and psychologically so as not to experience stress. However, committing fraud and

hiding the fraud over a long time could be extremely stressful (Wolfe & Hermanson, 2004:23). In having an understanding of fraud, the fraud perpetrator and the different theories it was equally important to understand what procurement fraud entails with an increasing number of organisations using suppliers based in emerging economies, potential opportunities for fraud and procurement fraud especially within the public procurement sphere are likely to escalate. Fraud involves the intent to deceive through false representation of a matter of fact, whether by word or by conduct, or by concealment of information, which should have been disclosed, in order to cause an entity to rely or act upon that misleading or false information and ultimately causing damages to the entity relying upon that false information. With procurement fraud or fraudulent procurement, the misrepresentation of truth in most cases could occur at every stage within the procurement cycle or process (Wolfe & Hermanson, 2004:34). Although there had been a lot of research done on the subject of fraud and procurement fraud in general, researches linking fraudulent and corrupt practices to the public procurement performance aspect are still meager.

Procurement Fraud

Procurement fraud is a deliberate deception intended to influence any stage of the procure-to-pay lifecycle to make a financial gain or cause a loss (Stadler & Benson, 2012:136). It can be perpetrated by contractors or sub-contractors external to the organisation, as well as staff within the organisation. Tan (2013:59) mentions that the nature of procurement fraud differs between the two core stages of the procurement lifecycle, namely the pre-contract award and post-contract award. Fraud in the pre-contract award phase is complex, often enabled by a lack of compliance with policy, but also involving activity such as collusion and procurement fraud which could be difficult to detect. Fraud in the post-contract stage is considerably different and it involves contracts which are already in place and which involve overpayments to contractors, through false or duplicate invoicing, and payments for substandard work or work not completed under contract terms (DCGTA, 2017:19, World Bank Centre; Financial Reporting Reform, 2017:26). The practice and unlawful activity could also be present in the margins of post-contract award fraud for example, overpricing for goods or services.

Procurement fraud in the pre-contract award phase

The pre-contract award phase generally involves the core stages of pre-tendering defining the requirement, developing the specification, producing a business case and tendering market engagement, bidder selection and bidder evaluation (Hess & Orthman, 2010:324) This phase ends in the award of a contract. COGTA Annual Reports (2018:25) mentions that fraud during this phase can be complex and difficult to detect. Much of the fraud occurs in an organisation's external environment, either with or without the knowledge of those involved in the procurement process.

According to Street (2017:12) the municipal sectors policy and guidelines underpin the pre-contract award phase. Public sector procurement specialists and other staff involved in the process are required to follow these to promote fair and transparent competition. Over time, the push for continuous improvement has seen the number of policies and procedures grow (Rustiarini, Nurkholis, & Andayani, 2019:np). This has added a level of complexity to the procurement process, making it somewhat onerous and leading to situations where shortcuts had been taken which lead to the bypassing of fraud controls. Payments fraud working group (PFWG) members cited numerous cases of fraud being enabled through a lack of compliance with local or national procurement policy, which suggests that where procurement policy was once a framework for mitigating fraud, it had now, paradoxically, become an enabler to fraud (PWC, 2014:36). The government's efforts to simplify public procurement presents an opportunity for fresh thinking, but care needs to be taken to ensure that important fraud controls are not discarded.

The main objective was to ensure the interoperability of procurement solutions and to enable the implementation of procurement fraud across the local municipal sectors through:

- Contributing to the definition of interoperability standards and developing public procurement vocabularies and code lists;
- Providing a set of reusable open-source solutions and services for e-procurement;
- Reducing the administrative burden and simplifying procedures for buyers and suppliers to encourage cross-border public procurement;
- Creating an ontology to illustrate the data relations within public procurement;
- Ensuring access to and reuse of public procurement data;

- Supporting interoperability initiatives.

Furthermore, reviewing legislation to modernize and simplify the legal framework for public procurement;

Reviewing preferential procurement legislation to enhance economic opportunities for industrial supplier development through public procurement;

Reviewing public procurement practices, the awarding of public procurement contracts, and the administration of contracts; to assess fairness, openness and compliancy to policy; make appropriate recommendations of practice improvements and advise on developmental training intervention strategies;

Administering a Register for Tender Defaulters and Restricted Suppliers that is open to the public and for government to consult for contractors prohibited from doing business with government, found to be involved in corrupt activities and for supplier non-performance, before the awarding of public procurement contracts

Fraud in the post-contract award phase

The nature of fraud in the post-contract award phase focuses firmly on contract management, specifically on payments made on contracts (COGTA, 2015-2018:28). Most public bodies use an electronic accounts payable system, with key controls around separation of duties between requisition, ordering, checking receipt of goods and services and authorising payment (Maulidi, 2017:58)

According to PWC report (2015:33) similar to cases in pre-contract award, Payments fraud working group (PFWG) members identified cases where these controls were bypassed which enabled fraud to occur. Notable examples involved overpayments to suppliers through the fraudulent submission of duplicate or false invoices which had been unknowingly paid by finance teams. More seriously, there were also cases where staff had colluded with suppliers to raise and process false invoices, often receiving bribes or 'kickbacks' in the process (World Bank Centre; Financial Reporting Reform, 2017:11).

The key difference with these examples from pre-contract award is the ability to detect fraud, albeit after it has taken place. Most public bodies use an electronic payments system, meaning structured data is produced which can be tracked and audited. With the right analytical approach, fraud can be detected, measured and appropriate action taken (Makwetu, 2019:08).

Legislation Governing Procurement Fraud

Procurement fraud occurs in both the public and private sectors. However, the occurrence of procurement fraud in the private sector had not enjoyed nearly as much attention as its occurrence in the public sector. This is because procurement fraud in the public sector involves the resources and commodities that legally and rightfully belong to the public, and which are administered by public figures in trusted, and on behalf of the public. Although it was widely accepted that public procurement was an area that was particularly susceptible to procurement fraud, and while much had been written about procurement fraud in general, not much has been written about procurement fraud in the public procurement context specifically.

Applicable legislation

- Public Finance Management Act

In South Africa, public procurement is extensively regulated. No single piece of legislation is applicable to all aspects of public procurement, and the rules pertaining to public procurement are found in several laws. Prior to 1994 public procurement in South Africa was centralised. Soon after 1994 government introduced budgetary and financial reforms. The first phase of reforms began with the introduction of a new intergovernmental system which required all three spheres of government to develop and adopt their own budgets. This decentralised budgeting model also meant that heads of departments needed to have control over procurement expenditure, if each sphere of government and each department within government were to be held accountable for its own budget. New legislation was required. The Public Finance Management Act (PFMA), for example, was adopted with the objective of modernising financial management and enhancing accountability. A basic principle of this modernised financial model is that managers must be given the flexibility to manage, within a framework that satisfies the constitutional requirements of transparency and accountability. This is the context within which the PFMA was drafted. It regulates financial management and is applicable to national and provincial government departments. It sets out procedures for the efficient and effective management of all revenue, expenditure, assets and liabilities, and establishes the duties and responsibilities of government officials in charge of finances. Apart from section 38, which sets out the general responsibilities of

accounting officers, the PFMA does not contain any more provisions directly related to the processes of public procurement. It is therefore not a statute dedicated solely to procurement or to supply-chain management practices.

- Municipal Finance Management Act

The other pertinent statute is the Municipal Finance Management Act (MFMA), which is applicable to municipalities in the local sphere of government. The procurement provisions of the MFMA are similar to those of the PFMA but contain more detail regarding the system. While the MFMA is also not a statute dedicated solely to procurement, it provides the legal framework for the implementation of an integrated supply-chain management process in local government. Section 112 prescribes that municipalities must adopt a supply-chain management policy which is fair, equitable, transparent, competitive and cost-effective. This section also sets out certain minimum aspects which the supply-chain management policy must cover. In terms of section 115, the accounting officer is responsible for the implementation of the supply-chain management policy. The accounting officer must also take all reasonable steps to ensure that mechanisms are in place to minimise the likelihood of fraud, procurement fraud, favouritism, and unfair and irregular practices. The MFMA also contains provision for contract administration after the tender award stage. Section 168(1)(a) provides that the Minister of Finance may make regulations or guidelines applicable to municipalities regarding any matter that may be prescribed in terms of the Act. It is in terms of this section that the MFMA Regulations and Treasury prescripts pertaining to municipal supply-chain management are issued.

Of more relevance is the Preferential Procurement Policy Framework Act (PPPFA), whose purpose is to give effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution. The PPPFA therefore provides a framework for the recognition of socioeconomic components and the setting and evaluation of an award criterion. It does this by introducing a preference point system to be utilised in the evaluation of tenders. The PPPFA leaves it open to organs of state to decide what specific goals to award points for, but states that any specific goal for which a point may be awarded must be clearly specified in the invitation to submit a tender. The PPPFA itself states that specific goals may include "contracting with persons, or categories of persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability and implementing the programmes of the Reconstruction and Development Programme". The provisions of the PPPFA are applicable to all levels of government.

The Local Government: Municipal Systems Act (LGMSA) provides that municipalities may procure the services of private persons to provide or perform a municipal service. The LGMSA makes it incumbent on municipalities, when they procure such services, to employ a competitive bidding process which complies with the relevant provisions of the MFMA. Sections 80, 81, 83 and 84 set out specific criteria to be met when a municipal service is provided through an external mechanism. With regard to the competitive bidding method, section 83 (1)(d) requires that the selection process must make the municipality accountable to the local community regarding progress with selection and reasons for any decisions. These criteria are in addition to the criteria required to be met in terms of the MFMA and MFMA Regulations. The provisions of the LGMSA are therefore directly applicable to public procurement when the good or service procured is required to fulfil a municipal service.

The Promotion of Administrative Justice Act (PAJA) is also relevant, because its provisions and administrative law in general apply to public-sector procurement. To a large extent, administrative law has been codified by PAJA, which sets the parameters within which correct administrative action must be taken. The provisions of PAJA impact on the public tender process and become particularly relevant when an aggrieved bidder opts to challenge a decision of an organ of state. If public procurement legislation does not contain satisfactory appeal or review mechanisms, then the aggrieved bidder will have no option but to resort to the use of PAJA.

Some of the many types of government procurement fraud in local municipalities, especially Madibeng local municipality which could lead to criminal prosecution or a civil case against individuals and municipalities include:

Paying, receiving, offering, or soliciting bribes and kickbacks, including lavish gifts;

Non-competitive contract awards, including paying too much for services, buying inappropriate items, or buying too many items;

Qualifying unqualified businesses as vendors eligible to bid to provide goods or services;

Accepting and paying for non-complaint services and/or low-quality non-complaint goods;

Collusive bidding, in which groups of bidders agree to set up a system where each can win a contract with a high bid. This could involve dividing up who bids on contracts or submitting high bids on a rotating basis;

Abuse of change orders, which involves submitting low bids and then significantly raising profits by submitting change orders after contracts are awarded;

Exclusion of qualified bidders;

Failure to fulfill contract specifications, using lower-quality materials or offering less services than promised and billed for;

Overbilling, including submitting inflated or duplicative invoices or billing for services which should not be paid for under the contract.

The following are additional forms of government procurement fraud which are prevalent:

Bid rigging/bid splitting to secure contracts;

Overcharging for goods, services, or labor;

Creation of shell companies to facilitate fraudulent payments;

Collusion between suppliers;

Improper product substitution;

Worthless or sub-standard products;

S. Trade Agreements Act compliance; and

Inflation of costs and charges.

As a result of the overwhelming volume of procurement transactions, and the fact that fraud is often embedded in a contract making it difficult to spot, the 'False Claims Act' (FCA) has become an increasingly powerful tool in helping to identify fraud, waste and abuse in government contracting. According to Kenney and McCafferty (2016:np) FCA is a government law designed to impose liability on persons and corporations who defraud government funded programs. One of the most powerful weapons the government has to combat fraud, the FCA is unique in that it permits individuals to sue on the government's behalf in order to recover funds for government programs. These lawsuits are known as "qui tam" actions, and the person bringing the case is known as a "relator." The continuous outsourcing of goods and services by the government has resulted in fraud within the acquisition life cycle of a product or service. Procurement fraud in Government can occur any time the government enters into a contract with a private entity. There is a multitude of ways that procurement fraud can be committed (Kenney & McCafferty, 2016:np).

For example, government contract fraud in which procurement and contractor fraud are two of the costliest types of government fraud and entails a company using bribes to win a contract even when it did not make the lowest or best bid. Other examples of contractor fraud include billing the government for incomplete work, inflating the cost of labor or supplies, and issuing kickbacks (World Bank Centre; Financial Reporting Reform, 2017:44)

The False Claims Act is the government's primary enforcement tool to prosecute alleged fraud. Companies can reduce their exposure to fraud enforcement actions by staying actively abreast of the government's rules and regulations regarding payment and, when those rules are ambiguous, adopting a reasonable interpretation of what those rules require and documenting the deliberative process. Companies can further reduce exposure to liability by communicating to the government, in writing, their understanding of the underlying rules because courts find that if the government continues to pay notwithstanding an alleged breach, the breach is not likely material to the government's payment decision. Companies can reduce their exposure to FCA retaliation actions by documenting the basis for employment terminations.

Examples of procurement fraud

Contract bid rigging: - Several parties compete for a contract – each taking a turn at being the lowest bidder and the lowest bidder usually wins the contract. Examples of Contract bid rigging include:

Grants: - An individual makes false statements on a grant application or fails to follow through with the conditions for receiving the grant. For example:

The issuing of false statements and claims wherein contractors or suppliers can submit false information about their employee credentials and experience, invoice for goods and services that are not delivered, charge for higher quality items than are provided, submit false or defective bonds, or make a variety of other false statements and claims.

Travel voucher: - Municipal employees misuse their travel voucher for purposes other than travel or in violation of the travel voucher use requirements. For example:

Imprest fund abuse: Replenished “imprest funds” (also known as “operating accounts” or “petty cash funds”) can be embezzled or used improperly by contractor employees. The employees might submit false or inflated requests for reimbursement of expenses, use the fund for personal or unauthorized expenditures, or “double-dip” by submitting reimbursement both to the fund and accounts payable.

Unnecessary purchases:

Unnecessary, excessive or inappropriate purchases of goods or services, or unnecessary repairs, might indicate procurement fraud or purchases for personal use or resale.

Small-acquisition purchase cards:

Municipal employees can make some purchases on a purchase voucher, if the expense does not exceed a certain threshold. It's fraudulent to use that card to break a large purchase into multiple small payments thus avoiding the bidding process. For example:

Purchases for personal use or resale: An employees can purchase items through his agency or company that are intended for his personal use, such as tools, personal computers, or automobile parts, or that the employee intends to resell as part of a side business, such as computer parts or inventory

Procurement and acquisitions: - This is a “catch-all” category for fraud ranging from kickbacks and pass-thru contracts to large businesses that continue to bid on work they were eligible to compete for as small businesses. For example:

Leaking of bid information: Procurement personnel can leak bid information from other bidders, or confidential pre-bid information, to a favored bidder to give it an unfair advantage in the bidding process. Such schemes usually occur as the result of procurement fraud.

Manipulation of bids: A procurement employee, probably as the result of procurement fraud, can manipulate the bidding process in a number of ways to benefit a favored contractor or supplier. These include leaking information regarding competing bids, accepting late bids, changing bids, re-bidding work and so on. A contractor can also submit a “low” bid with the understanding that the corrupt procurement official will approve later contract amendments and price increases.

Fictitious vendor: In a weakly controlled environment, an employee with procurement responsibilities, or in accounts payable, or an outsider, can submit bills from a non-existent vendor. Normally fictitious vendors claim to provide services or consumables, rather than goods or works that can be verified. Dishonest bidders also can submit “bids” from fictitious bidders as part of bid rigging schemes. Phantom vending schemes occur more often than thought and can be detected relatively easily through automated proactive fraud detection programs.

Product substitution: A supplier or contractor can substitute products or materials of lesser quality than specified in the contract, or use counterfeit, defective or used parts, in order to increase profits or comply with contract time schedules. The dishonest supplier might give gifts or favors to inspectors or pay kickbacks to contracting officials to facilitate the scheme and will submit false documentation to conceal it.

Common example of procurement fraud

Bribes and kickbacks: A bribe are usually defined as the giving or receiving of a “thing of value” to corruptly influence the actions of another, most commonly to influence a contract award or the execution of a contract. A “kickback” is a bribe paid by the contractor after it is paid. Most bribes in exchange for large contract awards in international development projects are paid as kickbacks, usually 5%-20% of the contract value. Corrupt payment: The bribe need not be in money or cash, and often is not.

Any benefit given or received with the intent to corruptly influence the recipient can be a bribe. “Things of value” that have been given and received as bribes include:

- Expensive gifts, free travel and lavish entertainment;
- “Loans,” whether or not repaid;
- Use of credit cards;

- Sexual favors (hiring of prostitutes, etc.);
- Overpaying for purchases, e.g., paying R20,000 for a car worth R5,000;
- Cash;
- Fees and commissions, even if recipient allegedly provided services to the payer;
- Hidden interests in business transactions;

Often the payments follow the general sequence outlined above, with the amount and form of payments becoming more significant and incriminating as the scheme progresses.

Corrupt influence:

Corrupt influence often is reflected as, among other things:

Qualifying an unqualified or untested company to bid or be a vendor;

Improper or non-competitive contract awards;

Paying too much for goods or services;

Buying too much of an item, or buying inappropriate items;

Continued acceptance of low quality or non-compliant goods or services.

As procurement fraud continues, the abuses often turn into fraud, such as fictitious invoices, with the parties conspiring to split the profits. Eventually the excesses of the scheme leads to its detection, as the mounting evidence of favorable treatment and fraud, and the conspicuous expenditures of the conspirators, call attention to their behavior. The Auditor General in his report (2015-2019) outlined a number of, procurement fraud cases which was categorized and influenced by different categories, such as loss of revenue and fraudulent disbursement of cash (expenditures). The report further highlighted that the common detection methods were classified by the change in the MO of perpetrators in procurement fraud, who were not only external but included employee's (Maulidi, 2017:21). Procurement fraud is a complex problem, which covers a plethora of unlawful activities from bid rigging during the pre-contract award segment through to false invoicing in the post-contract award phase. It could be perpetrated by individuals inside and outside an organisation.

The department of Cooperative Governance and Traditional affairs (COGTA) report, (2015-2019) postulates that procurement fraud is challenging to detect, and cases were rarely reported. Therefore, it is difficult to measure the extent of the problem. Furthermore, when procurement fraud is detected, the required resources are channeled into analysing documents to prove procurement fraud or irregularity and look for similarities specific to the MO. According to Labuschagne (2015:278) *modus operandi* is an approach of identification of procurement Fraud Committed Which Could Change Through Time. The Identification of Procurement Fraud Is Reliant On The Collection Of Evidentiary Material To Determine The Modus Operandi And Possibly The Identity Of The Perpetrator Which Remains At The Precipice Of Any Documentary Analysis In Procurement Fraud.

This study evaluates the MO of perpetrators in procurement fraud in the Madibeng local municipality. The chapter focuses on the aim of the research, on how *modus operandi* could be used as an identification technique including the concepts of identification and individualisation and what it entails. The concept of fraud and various theories are discussed including the *modus operandi* and the factors that influence the *modus operandi* of perpetrators were also examined. Finally, the chapter examines MO of perpetrators in Madibeng local municipality.

SIX COMMON TYPES OF PROCUREMENT FRAUD AND THEIR WARNING SIGNS:

Kickbacks and corrupt payments

A type of bribe, a kickback is paid by the contractor after they've received payment for the winning project. They often vary between 5% and 20% of the overall contract value. A corrupt payment is promised to influence the recipient for a successful bid. It can be monetary but can also take the form of goods or services in kind such as expensive gifts, credit cards, sexual favours and overpaying for reciprocal purchases.

- Warning signs:

There may be a broker or middleman involved in transactions, where it isn't needed. The selection of the contractor appears unjustified or there is approval of high prices and low-quality goods

A member of the procurement team receives gifts or seems to enjoy a sudden and unexplained increase in wealth

- Corrupt influence

Corrupt influence includes paying over market rates, buying more items than are needed, qualifying an untested or unqualified supplier and excluding qualified bidders. The perpetrator might also tailor or narrow specifications to such a degree that only their chosen bidder can win. Warning signs: This is harder to prove than a kickback, but some of the same signs of that category apply here, as well as:

Knowingly accepting low quality goods/services

Awarding contracts without robust and transparent justification

- Collusion and manipulation by bidders

Collusion (bid-rigging) often accompanies kickbacks and involves groups agreeing to submit complementary bids to win contracts, sometimes on a rotation basis. This system may be used to divide regions between select parties and to monopolise the field. Manipulation occurs when a bid, or circumstances surrounding it, are managed to benefit a preferred bidder.

Examples are leaking information from fellow bidders, accepting late bids and re-bidding of the tender.

Warning signs

- No public opening of bids;
- Deadlines are not enforced, extended unnecessarily or bids are accepted late;
- The late bidder is also the lowest bidder;
- Project is subject to re-bidding;
- Qualified or winning bidders are disqualified for unclear or questionable reasons;
- Bids are “lost”.

Billing fraud

This is the intentional submission of false, duplicate or inflated invoices by a supplier or contractor. This can also happen in collusion with the representatives of the buyer who will profit in some way from the fraud.

Warning signs: There are many in this category, but in essence:

- Invoiced goods/services can't be accounted for
- Records are non-existent or don't match
- Invoices share purchase order numbers or are identical in terms of value or service
- Total payments exceed total purchase order or agreed amounts

Conflicts of interest

Non-disclosure falls under this category, wherein a member of the procurement team fails to disclose their interests with a contractor or supplier, liaises with them unofficially, or accepts gifts or payments. Where an employee purchases items through their company and bills this to a project for private use, this is deemed to be personal interest and is clearly fraudulent.

Warning signs:

- Accepting of gifts and close fraternisation between bidder and buyer;
- Favouritism;
- Individuals appear to enjoy sudden and unexplained increases in wealth or engage in a side business.

Delivery fraud

There are three main types of deliver fraud: variation abuse, contract specification abuse and improper claims/imprest funds. In variation abuse, a contractor submits a successful low bid (in collusion with a procurement executive) and subsequently submits further multiple variations to increase financial gain. Fraudulent contractors may flaunt contract specifications by delivering sub-par goods or services, aware they fail to meet the quality expected. In order to succeed, the quality of the items or works is concealed or falsely represented. Sometimes, suppliers exploit operating costs or petty cash funds with false or exaggerated requests for reimbursement of expenses, personal or unauthorised spend, or duplication.

Conclusion

Procurement fraud has both direct and indirect effects on the departments of Madibeng Local Municipality. The direct costs of procurement fraud include not only bribes, but also funds wasted on inflated procurement contract prices, stolen institutional assets, and having students owing the institution due to procurement fraud. The indirect costs include inefficiencies resulting from the deterioration of institutions and unlawful activities.

This paper established that the practice of MO technique dates to 1809. As a result, this serves a possible purpose in the investigation of procurement fraud. Furthermore, MO data may be used in various ways, namely (i) as a technique for perpetrator identification, (ii) to bring about the identification and detection of perpetrators; (iii) as an aid in the prevention of procurement fraud; (iv) as an aid in the questioning of suspects; and (v) the place of investigating personnel and resources in places where observation is required.

The actions were taken by the perpetrator during the perpetration of procurement fraud to commit that fraud, forms the MO. It is relevant to be conscious of the fact that MO is a set of learned behaviours that the perpetrator develops and sticks to it because it works, but it is dynamic and malleable. In Madibeng Local Municipality, the case files reviewed for the perpetration of procurement fraud, a significant element of the MO generally lies in manipulating and misrepresenting documentary records, quite often through forgery and dishonesty.

Public procurement as a high-risk area for fraud. However, it cannot be observed empirically from the surface. Academics have explored various economic, social, and political factors to provide effective solutions to overcome this fraud, but no research has explicitly explained the individual factors that cause someone to commit procurement fraud (Zinn & Dintwe, 2015:65). The specific focus of this paper has been on bureaucrat's behavior as a procurement official. They can exploit their powers of 12 discretion in providing public goods to get a personal goal. Investigation conducted a literature review to describe the antecedents of individual fraudulent behavior. This review begins with a discussion of the literature explaining the roles and elements of the fraud diamond theory, namely pressure, opportunity, rationalization, and capability.

The fraud diamond theory is seen as an adequate framework for explaining individual fraudulent behavior in public procurement activities. This paper groups these pressures into three categories, such as occupational pressure, economic pressure, and social pressure. The opportunities available cannot be separated from the accountability system of the organization, both internal and external. The opportunity to commit fraud is also inseparable from the weak internal control system in the procurement process. Furthermore, the perpetrator will rationalize their fraudulent behavior with various reason. However, the fraudulent can nor occur without perpetrator's capability. Finally, is mean the opportunity will be the "door" of fraudulent behavior, while the pressure/motivation and rationalization will direct the individual towards the door. Even so, individuals must be able to recognize the opportunities available so they can walk to the door. This paper also describes the strategies to prevent, control, detection, as well as investigation and sanction.

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