

1.0 Recent Engagement with Sustainable Public Procurement in Gauteng

The Gauteng Province – and the Gauteng Department of Agriculture and Rural Development and Environment (GDARDE) in particular – have been engaging with the concept of sustainable public procurement and guidelines to promote such procurement for over a decade.¹ Sometimes this engagement has been with guidelines within a particular sector, such as within the construction or transport sector.

1.1 Engagement in the Construction Sector

In the construction sector, Gauteng has a current guideline applicable since 2016, the Draft Gauteng Sustainable Development Implementation Guideline.² In addition, Johannesburg has been selected by the Department of Science and Technology as one of South Africa's three hydrogen hubs. The Johannesburg hub will be driven in part by H2-based sectors switching from gray H2 and by public buildings and buses and future private building demand.³ In 2020, the Gautrain Management Agency, which operates the Gautrain and the Gaibus, had "the ultimate intent of ending up with hydrogen fuel-cell-powered mobility options."⁴

1.2 Engagement in the Transport Sector

The transport sector has also seen some attention to sustainable public procurement. In 2021, the Gauteng Department of Roads and Transport published a GPG-wide strategic plan: Growing Gauteng Together Through Smart Mobility.⁵ The plan indicates a desire to engage in sustainable procurement. In specific, the intention is to implement "... the Green Procurement Guidelines (GPG) for full Government fleet of land transportation. The DOT procurement guideline considers the following government fleet; public transport buses, waste trucks, light-duty vehicles, passenger cars, motorcycles, buses, construction vehicles and police vehicles." Another intention included in the vision document is to engage in "[i]nvestment and procurement of connected vehicles, electric vehicles and electric charging stations."

¹ Laura Turley, "Implementing Sustainable Public Procurement in South Africa: Where to Start," 2014, 32, https://www.iisd.org/system/files/publications/implementing_spp_south_africa.pdf.

² GDARD, "Draft Gauteng Sustainable Development Implementation Guideline," 2016.

³ Sara Karapetian, "South Africa Hydrogen Valley Final Report" (Department of Science and Technology, October 2021), https://www.dst.gov.za/images/2021/Hydrogen_Valley_Feasibility_Study_Report_Final_Version.pdf.

⁴ Irma Venter, "Gautrain to Complete Electric Bus Pilot Project by End-2021," accessed January 19, 2023, <https://www.engineeringnews.co.za/article/gautrain-to-complete-electric-bus-pilot-project-by-end-2021-2020-10-27>.

⁵ Gauteng Department of Roads and Transport, "Growing Gauteng Together Through Smart Mobility 2030," 2021.

As further indication of the strength of this intention, there is a current initiative to procure e-vehicles in Gauteng Province for the GPG fleet. The Gauteng Department of Transport is also understood to be preparing and developing an app about sharing trips within the province.

Another example in Gauteng's transport sector is the commitment Tshwane made in 2014 to have 40% of its bus fleet in e-vehicles by 2020.⁶ The City of Ekurhuleni states that it "could begin by looking into sustainable procurement of electric vehicles for its own fleet, as well as looking into opportunities for private sector investment and space rental to build charging points."⁷ Likewise, at the City of Johannesburg, a fleet electrification feasibility study has been completed in June 2022 for the City of Johannesburg's vehicle fleet by a UK-funded outside consultancy.⁸ While there has been some "re-thinking" about e-vehicles, this research has related to the provision of incentives for purchase and in any case has related to the private rather than the public sector.⁹

There may be an underlying reason why transport is a sector with clear evidence of engagement with sustainable public procurement. Transport is one of the sectors where there is a significant degree of relevant overlap or interaction between existing Gauteng provincial/local and relevant national policies in the field of sustainable public procurement. In particular, the national Department of Transport has begun to develop and is very close to finalization of a green procurement guideline for its vehicle fleet.¹⁰ The focus is on e-vehicle procurement. This 2021 draft guideline conceives green procurement through the life-cycle approach to costing as a sub-set of value for money procurement. The draft guideline recommends that green vehicle procurement be done either through an extant national transversal contract or through competitive bids via the supply chain management process. This national line department policy is broadly supported by industrial policy.¹¹

Even further along than the national process, an initiative to implement electric vehicles is currently underway in the Western Cape.¹²

1.3 Engagement in the Environmental Field (Cross-Cutting Sector)

⁶ City of Tshwane, "Sustainable Procurement Strategy," March 2017, <https://www.tshwane.gov.za/sites/Council/Office-Of-The-Executive-Mayor/Climate%20Action/006-Sustainable-Procurement-Strategy.pdf>.

⁷ "City of Ekurhuleni Green City Climate Action Plan Summary Report," May 20, 2022, 23, <https://ekurhuleni.gov.za/wp-content/uploads/2022/05/CoE-GCAP-Summary-Report-E-Version-20-05-22.pdf>.

⁸ "Sustainable Energy Africa - City of Johannesburg EV Readiness Support Programme: Phase 2," accessed November 23, 2022, <https://www.sustainable.org.za/project.php?id=66>; Sustainable Energy Africa, "Electric Vehicle Procurement Options for Local Government," June 2022.

⁹ Ashley Nunes, Lucas Woodley, and Philip Rossetti, "Re-Thinking Procurement Incentives for Electric Vehicles to Achieve Net-Zero Emissions," *Nature Sustainability* 5, no. 6 (June 2022): 527–32, <https://doi.org/10.1038/s41893-022-00862-3>.

¹⁰ "Guideline for Procurement of Green Vehicles in the Public Sector (Draft: 26-10-2021)," October 26, 2021.

¹¹ Department of Trade, Industry, and Competition, "First Input Towards the Development of the Auto Green Paper on the Advancement of New Energy Vehicles in South Africa," May 18, 2021, http://www.thedtic.gov.za/wp-content/uploads/EV_Green_Paper.pdf.

¹² Western Cape Government, "A Strategy for the Implementation of Electric Vehicles," January 2022, <https://www.westerncape.gov.za/tpw/files/atoms/files/GMT%20EV%20Strategy.pdf>.

Simultaneous with the sector developments just noted, sometimes Gauteng's engagement with sustainable public procurement has taken the form of a sustainability theme within Province-wide strategy.

Understandably, Gauteng-overall strategies with attention to environmental factors have always highlighted and touched upon certain significant economic sectors and upon the Province's continuing need for economic development.¹³ Although the region's growth path has historically been tied to resource-intensive mining and industrial activities, official provincial strategies from as early as a decade ago -- the Developmental Green Economy Strategy (2010) and its successor the Green Strategic Programme (2011) -- began to envision and promise a more sustainable future. However, progress on their implementation has been weak as these green economy strategies faced severe conundrums in the South African context.

This province-wide attention to sustainable public procurement has often occurred within general climate change or environmental strategies that GDARDE has led and championed. Leading up to March 2020, GDARDE developed and formulated the Gauteng City Region Over-Arching Climate Change Response Strategy and Action Plan (the 2020 Gauteng CC Response Strategy). This Plan is currently in effect and is being implemented. This project is part of that implementation.

The 2020 Gauteng CC Response Strategy has a relatively clear and focused understanding of sustainable public procurement. It understands green procurement as incorporating the lifecycle of assets approach to sustainability and recognized the significant impact that can be achieved by greening procurement of infrastructure in the Province, particularly describing the progress made by the Gauteng Department of Infrastructure Development (GDID) in greening both new and upgraded buildings.¹⁴ Within this overall attention to infrastructure, focusing more explicitly on energy than on water efficiency, the 2020 Strategy observed "building developers and users could increase the energy efficiency performance criteria of their buildings or facilities to a higher standard through planning and design based on holistic life cycle assessment and costing."¹⁵

Dating from at least 2015, one GPG initiative within this sector facilitated by the provincial entity the Gauteng Infrastructure Finance Agency (GIFA) on behalf of the Gauteng Department of Infrastructure Development, is the Kopanong Precinct (pictured below) a plan for the adaptive reuse of a large number of buildings in the historic heart of Johannesburg. This project is current at the tendering phase.¹⁶ Charged with finding funding for and bringing to financial close either through the PPP or traditional procurement route, the Gauteng Infrastructure Financing Agency (GIFA) has planned to do socio-

¹³ Graeme Götz and Alexis Schäffler, "Conundrums in Implementing a Green Economy in the Gauteng City-Region," *Current Opinion in Environmental Sustainability* 13 (April 1, 2015): 79–87, <https://doi.org/10.1016/j.cosust.2015.02.005>.

¹⁴ Gauteng Department of Agricultural and Rural Development, "Gauteng City Region Over-Arching Climate Change Response Strategy and Action Plan (March 2020)," March 2020, sec. 6.5, 7.3.1, <https://amcham.co.za/wp-content/uploads/2020/12/Gauteng-City-Region-Over-arching-Climate-Change-Response-Strategy-and-Action-Plan-March-2020-Final.pdf>.

¹⁵ Gauteng Department of Agricultural and Rural Development, sec. 6.5.

¹⁶ "Projects – GIFA," accessed January 20, 2023, <https://gifa.co.za/projects/>.

economic impact assessment of the major infrastructure projects for which it was seeking alternative funding.¹⁷ In 2020-2021, GIFA spent R3.7m on socio-economic and market studies.¹⁸



Viewing the construction sector as a significant one for sustainable public procurement, the 2020 Gauteng CC Response Strategy stated that “Bringing about change in the commercial and institutional building sector, especially with respect to public facilities, is primarily a matter of re-aligning existing procurement processes with more sustainable standards.” It suggested four specific ways in which the GPG could spark sustainability: (1) Developing policy (setting a more ambitious minimum compliance benchmark) for commercial buildings within the province. (2) By including energy efficiency as one of the award criteria when procuring different (than buildings) products or services. Energy efficiency of a product or service as an award criterion in procurement could stimulate companies to improve the energy efficiency of their (industrial) buildings. (3) Engaging with municipalities to set and impose more ambitious energy and water efficiency by-laws. (4) Provide more information and know-how to companies and open one of its successfully retrofitted buildings to the public to learn from.

Regulations introduced in 2020 and in effect since December 2022 have required non-residential buildings in certain categories to obtain and display energy performance certificates increasing the awareness and transparency of the energy efficiency of these structures.¹⁹ Beyond this, the extent to which these specific routes to sustainability are implemented is not yet clear.

¹⁷ “Gauteng Infrastructure Financing Agency 2019-2024 Strategic Plan,” March 4, 2020, 9, 21, <https://gifa.co.za/wp-content/uploads/2021/11/GIFA-2019-2024-Strategic-Plan.pdf>.

¹⁸ “Gauteng Infrastructure Financing Agency Annual Report 2020-21,” 105, accessed November 12, 2022, <https://gifa.co.za/wp-content/uploads/2021/11/GIFA-Annual-Report-2020-21.pdf>.

¹⁹ Staff Writer, “The New Certificate Businesses in South Africa Need to Know about – or Risk Facing a R5 Million Fine and Jailtime,” accessed January 25, 2023, <https://businesstech.co.za/news/business/630469/the->

1.4 Relevant Studies on Gauteng Public Procurement Implementation

1.4.1 BEE & SMME Suppliers

At least two studies have been published in the last 8 years with specific reference to the black economic empowerment through public procurement in Gauteng. Research from 2015 on black economic empowerment and public procurement in Gauteng has concluded that systemic issues with the procurement system – such as non-compliance, fraud and corruption, and levels of management skill and awareness – are hampering the pursuit of equity.²⁰ A 2022 study found along similar lines, placing the fault with the lack of achievement of BBBEE objectives with failures of PPPFA implementation.²¹ Nonetheless, this more recent study found that general levels of understanding and training regarding the PPPFA within government departments in Gauteng were high.

However, a 2014 study was not as laudatory.²² Mofokeng and Luke sent surveys to the Chief Financial Officers (CFOs) of public entities, largely in Gauteng Province. They concluded that “public entities are not consistently applying the leading procurement practices.” One of their findings relevant for this current project was that “[s]upplier management [was] one of the least applied leading practices. The majority of supplier contracts are not monitored and entities frequently make payment for service before verification of quality or goods and services.”²³

1.4.2 Electronic Procurement

The degree to which electronic procurement has been taken up and has been effective in Gauteng has been studied in relation to SMME supplier development in at least two research studies over the past decade. The first, published in 2014, concluded that “the adoption and use of electronic procurement in the South African construction industry is still in its early stages particularly in the public sector.” In particular, no evidence was found of any electronic tenders done by the Gauteng Department of Infrastructure Development.²⁴ A Master’s thesis published just a few years later, in 2017, agreed that the use of e-procurement was “still evolving” and did not report any significant degree of

new-certificate-businesses-in-south-africa-need-to-know-about-or-risk-facing-a-r5-million-fine-and-jail-time/; “Regulations for the Mandatory Display and Submission of Energy Performance Certificates for Buildings” (2020), https://www.gov.za/sites/default/files/gcis_document/202012/43972gon700.pdf.

²⁰ John Nkwananchi Hlakudi, “The Implementation of Preferential Procurement Policy in Gauteng Province: Challenges and Solutions,” *Africa’s Public Service Delivery & Performance Review* 3, no. 1 (March 1, 2015): 55–73, <https://doi.org/10.4102/apsdpr.v3i1.75>.

²¹ Beatah Sibanda and Ndivhuho Tshikovi, “Supply Chain Performance and Preferential Procurement in Gauteng Government Departments,” *Journal of Transport and Supply Chain Management* 16, no. 0 (May 30, 2022): 11, <https://doi.org/10.4102/jtscm.v16i0.702>.

²² Moitswadi Mofokeng and Rose Luke, “An Investigation into the Effectiveness of Public Entities’ Procurement Practices : Original Research,” *Journal of Transport and Supply Chain Management* 8, no. 1 (January 2014): 1–7, <https://doi.org/10.4102/jtscm.v8i1.136>.

²³ Mofokeng and Luke, 6.

²⁴ Samuel Laryea, “Electronic Procurement in the South African Construction Sector: Case Study of Government Departments in the Gauteng Province,” in *Proceedings of the DII-2014 Conference on Infrastructure Investments in Africa*, 2014, <https://core.ac.uk/reader/79124290>.

change. This research found that “tender submission on GDID infrastructure projects are done manually, through the submission of documents in the tender box situated at the GDID offices. It can be said that GDID does not utilise the e-submission methodology of e-procurement. It can further be surmised that when tender documents are submitted manually, evaluation of those documents is done manually and that e-evaluation is not implemented.”²⁵

1.5 Sustainable Public Procurement in Gauteng To Date: An Emergent Practice

In view of the province-wide and sector-specific developments as outlined above in this section, it seems fair to characterize GPG’s engagement with sustainable public procurement as having gone through a number of ebbs and flows over the past decade. Due to this steps forward and steps backwards set of movement, the overall forward progress is discernible but the trend towards sustainable public procurement has not yet broken through to constitute a green Gauteng wave with any real power. About the best and most hopeful that one can be towards the sustainable public procurement concept within Gauteng prior to this project’s initiation in 2022 is that it is an emergent practice.²⁶

2.0 Gauteng: A Model Province for Procurement?

The legal framework for public procurement in South Africa is explained more fully in overview in the Framework and the Literature Review documents for this SPPGs project. This section of this preliminary report focuses on the governance of public procurement in Gauteng.

2.1 Governing Documents: GPG SCM Framework & the Model Policy 2017-2018

There are currently two key regulatory/policy documents governing the implementation of the public procurement system in Gauteng province at provincial level. These documents are generally kept internal to GPG.

The first is the Gauteng Provincial Government Supply Chain Management Framework 2017-2018.²⁷ The second is the Gauteng Provincial Government Supply Chain Management Model Policy 2017-2018.²⁸ The second document is a model for procurement policy at provincial entity level. It is controlled by the policy contained in the Framework. The GPG SCM Framework was signed off on 30 March 2017. This was the day before the

²⁵ Ronald Alfred Sithole, “Implementation of E-Procurement by the Gauteng Department of Infrastructure Development and Its Impact on the Development of Small and Medium Construction Firms” (Johannesburg South Africa, University of the Witwatersrand, 2017), 112.

²⁶ Philip Harrison, “Sustainability in City-Regionalism as Emergent Practice: The Case of the BRICS,” *Sustainability* 13, no. 9 (January 2021): 4721, <https://doi.org/10.3390/su13094721>.

²⁷ Gauteng Provincial Treasury, “Gauteng Provincial Government Supply Chain Management Framework 2017-2018,” March 30, 2017, https://e-tenders.gauteng.gov.za/Publications/GPG%20SCM%20Framework%202017_18.pdf.

²⁸ Gauteng Provincial Treasury, “Gauteng Provincial Government Supply Chain Management Model Policy 2017-2018,” 2018 2017, <http://e-tenders.gauteng.gov.za/Publications/GPG%20SCM%20MODEL%20POLICY%202017%202018.pdf>.

2017 Preferential Procurement Policy Regulations came into effect. The GPG SCM Framework and the GPG SCM Model Policy are both aligned with the 2017 PPP Regulations.

As discussed in more detail in the SPP Literature Review, the 2017 PPP Regulations have been replaced as of 16 January 2023 with the 2022 Regulations. Like the 2017 Regulations, the 2022 Regulations derive from the Preferential Procurement Policy Framework Act and of course section 217 of the Constitution.

The Framework and the Model Policy are both documents slightly over 30 pages and are intended to be read and worked with by public procurement (SCM) officials within the Gauteng Province. They are thus not primarily directed at technical officials within line departments, even though those officials may be closely involved in formulating the specifications for particular procurements.

The Framework draws its own power primarily from the Public Finance Management Act (PFMA).²⁹ The Framework essentially boils down the rules about public procurement relevant to the Province from the Constitution, relevant national legislation and subordinate legislation, and instruction notes made under the PFMA by the Office of the Chief Procurement Officer (OCPO) at National Treasury. It then puts those rules into a 48-item Framework so that provincial procurement officials can go to the Framework first in order to understand the public procurement system.

In terms of its content, the Framework largely sticks within OCPO policy in interpreting and essentially codifying public procurement rules. This means that the Framework covers the procurement cycle over what can be thought of as the four steps of procurement. These four steps are sequential phases in the procurement process itself: first, planning a procurement; second, going to market with the procurement and interacting with potential suppliers about the procurement through a particular method (such as open competitive bidding); third, evaluating bids received and concluding a contract with a supplier; and fourth, overseeing and monitoring the supply of goods, services, or works procured.

The Model Policy is more focused on implementation than the Framework. Nonetheless, perhaps because it is intended to function closer to ground level, it does contain some element that directly and, as pointed out below, innovatively relate to the constitutional and legislative framework. The Model Policy specifies its own application, identifies socio-economic objectives, sets up a committee system, provides for the opening, closing and validity of bids, allows for deviations from normal procurement processes, treats compulsory subcontracting, and regulates disposal and letting of state assets as well as a number of other procurement features and topics.

2.2 The Gauteng Open Tender Process (Transparency)

²⁹ "Public Finance Management Act 1999," accessed March 7, 2016, http://www.saflii.org/za/legis/consol_act/pfma1999206/.

There is one substantive item where Gauteng province is arguably distinctive in national context in its policy choices and interpretations of the governing legal framework for the public procurement system. This is the Gauteng open tender process. Tenders that meet a certain threshold as determined by the Gauteng Provincial Treasury undergo this process in order to improve openness and transparency in procurement processes. This policy innovation is supported by provincial legislation.

As reflected in the Model Policy, this entails two items: probity audits and public adjudication of bids.³⁰ The first means that all open tender projects must be audited by independent qualified auditor prior to the approval of specifications, the terms of reference, and the adjudication of the tender. The second means that members of the public will be allowed to observe the adjudication process of all tenders.

2.3 Explicit Guidance on Sustainability in Public Procurement (Equity)

In one section where it discusses five pillars of public procurement, the Model Policy follows closely the General Procurement Guidelines promulgated by National Treasury.³¹ This is in interpreting the five guiding principles the Constitution lays down in section 217 for public procurement. The Model Policy takes the constitutional wording and turns them into five principles of procurement, referred to as pillars of procurement.³² Each of the five principles has a short paragraph elaboration under the following headings (four of which are slight elaborations on s 217(1)): value for money; open and effective competition; ethics and fair dealing; accountability and fair dealing; and equity.

In the Gauteng Model Policy, the current paraphrasing for equity is: “The word “equity” in the context of this policy means the application and observance of government policies which are designed to advance persons or categories of persons disadvantaged by unfair discrimination. This pillar ensures that the *department/entity* is committed to economic growth by implementing measures to support industry generally, and especially to advance the development of SMMEs and black people.”³³ (item 10.5). This borrows wording directly from the national General Procurement Guidelines.³⁴

From a sustainable public procurement point of view, the wording in both the Gauteng Model Policy and the General Procurement Guidelines on this key concept of equity is disappointing. It fails to appreciate the interrelation of finance, historical redress, and environmental health.

As part of the national/provincial feedback on this issue, it should be possible for Gauteng to suggest revising this section of the Model Policy along the lines of the JSR

³⁰ Gauteng Provincial Treasury, “Gauteng Provincial Government Supply Chain Management Model Policy 2017-2018,” 21.

³¹ National Treasury, “General Procurement Guidelines,” accessed November 11, 2022, <http://www.treasury.gov.za/legislation/pfma/supplychain/general%20procurement%20guidelines.pdf>.

³² Gauteng Provincial Treasury, “Gauteng Provincial Government Supply Chain Management Model Policy 2017-2018,” 10–11.

³³ Gauteng Provincial Treasury, sec. 10.5.

³⁴ National Treasury, “General Procurement Guidelines.”

version of the Public Procurement Bill which was developed in Nedlac. That Bill contains the following text in section 2A(1)(b):

“equitable public procurement by

- (i) ensuring that public procurement is sustainable and has the most positive environmental, social and economic impacts possible over its entire life cycle;
- (ii) ensuring the protection and advancement in public procurement of persons disadvantaged by unfair discrimination;
- (iii) stimulating economic growth by promoting(aa) local manufacturing; (bb) innovation; and (cc) investment;
- (iv) promoting the protection of the environment for the benefit of present and future generations; and
- (v) ensuring that the public procurement system is reasonable, fair and just”.

2.4 A New Development in the Public Procurement Policy Process At National Level Relevant for Provincial Level

There is an important recent policy development external to the Framework and Model Policy that may necessitate the revision of those documents. In the Afribusiness case, the 2017 PPP Regulations were struck down by the Supreme Court of Appeal and, in the course of litigation in front of the Constitutional Court, were given life only until January 2023. The 2017 Regulations were found by the majority decision of the Constitutional Court to be wider than the powers given to the Minister of Finance in terms of the relevant empowering legislation. National Treasury has gone through a notice and comment process regarding replacement regulations and in early November published final text for the Preferential Procurement Regulations (2022) intended to take effect 16 January 2023. The regulations struck down concerned specific mechanisms (such as pre-qualification) used for giving effect to what is usually termed preferential procurement, including local content, but did not include preference points system for open competitive tenders, which is still contained in the PP Regulations (2022). The “specific goals” that an organ of state may pursue are given some guidance through NT’s promulgation of the Reconstruction and Development Programme White Paper from 1994, drawing upon the RDP’s mention in the PPPFA.³⁵ The Western Cape Provincial Treasury has published an implementation guideline for entities at local government level.³⁶

Based on a discussion with the Acting CFO of GDARDE in the week of 16 January 2023, the process of revising the GPG SCM Framework and the GPG SCM Model Policy to be aligned with the PP Regulations (2022) appears to be well underway within GPG. This process may present an opportunity to either influence the revised Framework and Model

³⁵ “GN 1954 OF 1994: Parliament of the Republic of South Africa, White Paper on Reconstruction and Development, Cape Town, 15 November 1994” (1994), http://ocpo.treasury.gov.za/Resource_Centre/Legislation/governmentgazetteid16085%20-%20RDP.pdf.

³⁶ I Smith, “Western Cape Treasury Circular Mun No. 21/2022: Implementation Strategy for Municipalities on the Preferential Procurement Regulations 2022” (2022), https://www.westerncape.gov.za/provincial-treasury/files/atoms/files/Treasury%20Circular%20Mun%20No%2021%20of%202022%20%20Implementation%20Munis%20Preferential%20Procurement%20Regulations%20_.pdf.

Policy or to learn from the process with a view to devising a strategy to have the Framework and Model Policy aligned with the proposed Draft SPPGs.

2.5 Influence of the SCM Framework and Model Policy in Practice

2.5.1 Intended Degree of Influence

The March 2017 Model Policy is of course just that – a model policy. On its own, it has no legal force. However, read with the PFMA and within the context of the public procurement, it does have force. The clear expectation – as expressed in both the Model Policy and perhaps more significantly in the Framework (which has force as an adopted policy of the Province) – is that provincial departments and the public entities at provincial level within Gauteng use the Model Policy as the base for their own procurement policy.

As the Model Policy itself puts it on page i: “Model policy for adoption by departments and public entities in terms of the Public Finance Management Act and its accompanying regulations. (1). Review this model policy to ensure that it meets the needs and requirements of the department or entity, and amend where required. (2). Insert the name of department or entity and other variable information where required throughout the policy. Check for words written in italic and delete one, and also provide the full name of the department or entity. (3) Public entities must substitute the term “Accounting Officer” with Accounting Authority. (4) Departments and entities must write their own introductory policy statements that are aligned to the mandate of the department or entity and the province at large. Replace the introduction on the model policy. (5). If the Accounting Officer or Accounting Authority approve a policy that substantially differs from the model policy, the Accounting Officer or Accounting Authority must ensure that such a policy complies with the relevant legislation and regulations. The Accounting Officer or Accounting Authority must report any deviations from the model policy to Gauteng Provincial Treasury. (6) Departments and entities are required to make additions to the model policy if necessary.”³⁷

Of course, this step of translation and adoption needs to be confirmed empirically.³⁸ It is also very clear from the wording noted above that Provincial Treasury considers that public entities ought to treat the model policy in a similar fashion to provincial departments. However, that is also an empirical proposition that should be tested in the final research.

2.5.2 Effect of COVID-19 Pandemic on Gauteng Public Procurement

One important question asks to what extent has sustainable public procurement and the development of sustainable public procurement policy in Gauteng Province been effected by the COVID-19 pandemic? The importance of this question was underlined by research finding that local government needs to find more innovative means of ensuring transparency, especially in the supply chain processes, as municipalities rely heavily on

³⁷ Gauteng Provincial Treasury, “Gauteng Provincial Government Supply Chain Management Model Policy 2017-2018.”

³⁸ It would be very interesting to understand whether this mode of public procurement system policy formulation is what is used in the other eight provinces.

outsourcing to provide public services to the communities they serve.³⁹ Other research shows a lack of accountability and integrity in the SCM processes and systems exacerbated corruption in municipalities during the COVID-19 pandemic, leading to significant effects on citizens and state institutions as well as on communities themselves.⁴⁰ Arguably, the National Treasury and other SCM institutions needed to but did not successfully develop an ‘emergency procurement strategy’ as a regulatory response to the pandemic.⁴¹ If the public procurement system failed to respond adequately to the Covid-19 crisis, it must not do so with respect to future ones and more so with the current and ongoing crisis of climate change.⁴²

2.5.3 GDARDE: Case Study on Model Policy Influence on SCM Policy (Provincial Level)

This preliminary status quo report has collected a number of model and actual public procurement policies at both provincial and local government level. As an initial step towards the prioritized level of provincial departments, we can compare the GDARDE actual policies in use with the Gauteng model procurement policy.⁴³ There are three GDARDE SCM policies in use.

2.5.3.1 GDARDE SCM Policy for Infrastructure Delivery and Procurement Management (July 2022)

One SCM policy in use in GDARDE is the Supply Chain Management Policy for Infrastructure Delivery and Procurement Management (July 2022). This policy applies to the infrastructure procurement for the entire department.⁴⁴ It is intended to read along with the GDARDE Supply Chain Management Policy as well as a long list of legislation, regulations, instructions, and standards.⁴⁵ The content of this July 2022 appears to be driven primarily not from provincial policy and model instruments but rather from national level. As the policy itself states: “Th[is] policy has been developed in accordance with the provisions of the regulatory frameworks applicable to SCM for Infrastructure which includes the [Framework for Infrastructure Delivery and Procurement Management (FIPDM)].”⁴⁶

³⁹ Nduduzo C. Ndebele and Methembe Z. Mdlalose, “Transparency in Local Government Procurement During the Era of Covid-19 in South Africa,” *Journal of Public Administration* 56, no. 3 (September 2021): 539–50, https://doi.org/10.10520/ejc-jpad_v56_n3_a10.

⁴⁰ Evangelos Mantzaris and Bethuel S. Ngcamu, “Municipal Corruption in the Era of a COVID-19 Pandemic: Four South African Case Studies,” *Journal of Public Administration* 55, no. 3–1 (September 2020): 461–79, <https://doi.org/10.10520/ejc-jpad-v55-n3-1-a4>.

⁴¹ Gaopalelwe Mathiba, “Corruption, Public Sector Procurement and COVID-19 in South Africa : Negotiating the New Normal,” *Journal of Public Administration* 55, no. 4 (December 2020): 642–61, <https://doi.org/10.10520/ejc-jpad-v55-n4-a5>.

⁴² Pandelani H. Munzhedzi, “Analysing the Application of Governance Principles in the Management of COVID-19 in South Africa: Lessons for the Future,” *Africa’s Public Service Delivery and Performance Review* 9, no. 1 (n.d.): 490, <https://doi.org/10.4102/apsdpr.v9i1.490>.

⁴³ The final research effort can work from the contact details and tenders available through the Gauteng Open Tenders website. Further, final research can verify whether Provincial Treasury has a stock of notifications of deviations from the model, as the deviating departments and entities are required to report on “significant” deviations.

⁴⁴ “GDARD Approved Infrastructure SCM Policy,” July 2022, 11.

⁴⁵ “GDARD Approved Infrastructure SCM Policy,” 10.

⁴⁶ “GDARD Approved Infrastructure SCM Policy,” 9.

There are some green elements within GDARD's July 2022 Infrastructure procurement policy but they appear to be truly incidental and not central to the document. Rainwater harvesting systems are noted on p 30 as "part of green building"; solar water pumping systems are also noted. Just like the General Procurement Guidelines and the Gauteng Model policy, it would appear from this preliminary research that GDARD's current SCM policy is inadequate from a sustainable public procurement perspective.

2.5.3.2 GDARDE SCM Management Policy (October 2020)

Of course, GDARDE also has its very own Supply Chain Management Policy.⁴⁷ Upon examination, two particular features emerge. The first is that GDARDE's policy does not in fact follow closely (at all) the format of the Gauteng SCM Model Policy. The categories, number of items, and content all differ (although it is beyond the scope of this memo to ascertain whether, upon a proper and comprehensive legal interpretative analysis, they differ or conflict in terms of substantive content).

One might well ask whether the apparent substantial distance between the GDARDE SCM policy and the GPG Model Policy is a transgression or an anomaly. While further research within GPG will be necessary to determine the matter, it appears to be neither. GDARDE appears to be within the norm for a GPG department.

The second is that GDARDE's SCM policy does use the Gauteng Model Policy as a model but not for the policy as a whole (as just noted) but rather for its understanding of the procurement process – that is the purported steps in the procurement cycle from demand management to acquisitions management to logistics management to fleet/transport management to facilities management to disposal management to supply chain performance to risk management.⁴⁸ Only some of these are true steps in the procurement cycle – fleet/transport management, facilities management, supply chain performance, and risk management are strictly speaking not part of the procurement cycle, or else included in the remaining elements that are.

2.5.3.3 Other GDARDE SCM Policies including the Supplier Rotation Policy (2015)

There appear to be important policies at department level that are consistent with but not explicitly required by or integrated into the Model SCM Policy. For instance, GDARDE has a Supplier Rotation Policy.⁴⁹ This policy applies to procurements between R2000 and R500 000, instituting a policy of rotating for the request for three quotes among a database of pre-qualified HDI suppliers, out of the 15 000 suppliers registered. The Model Policy appears consistent with this Supplier Rotation Policy, since 12.4 specifies only that procurements above R500K must be by open competitive tenders, that a department must apply the 2017 Preferential Procurement Regulations to procurements between R30K and R500K, and that a department may or may not apply preferential procurement to

⁴⁷ "Supply Chain Management Policy (GDARD)," October 2020.

⁴⁸ "Supply Chain Management Policy (GDARD)," sec. 5.1.

⁴⁹ GDARD, "The Supplier Rotation Policy," March 5, 2015.

procurements under R30K.⁵⁰ The Model Policy furthermore regulates and specifies the categories for which targeted procurement may be effected (item 15).⁵¹

2.6 Sustainability Criteria within SCM Policies (Gauteng Local Level)

This section brings together some secondary and some primary research on sustainability criteria within SCM policies at local government level in Gauteng.

2.6.1 Tshwane

Tshwane early on – 2005 – articulated an intention to develop a green procurement guideline.⁵² As early as 2007, Tshwane was intending to select five priority products for green procurement inclusion.⁵³ However, more than a decade would elapse before a specific strategy would be adopted, the March 2017 Sustainable Procurement Strategy.⁵⁴ In 2013, the City’s Sustainability Unit was established.⁵⁵ Prior to the adoption of the 2017 Strategy, Tshwane worked with the Council for Scientific and Industrial Research (CSIR) to develop three policy instruments including a draft municipal by-law promoting sustainable development in the green buildings space.⁵⁶ The City of Tshwane’s Sustainability Unit, in collaboration and with the support of South African Cities Network (SACN) led the process of developing the 2017 Strategy.

Tshwane’s currently applicable Supply Chain Management Policy was approved in 2011 and published in 2016.⁵⁷ As stated by the Sustainability Unit, “[t]he city’s Supply Chain Management Policy, published in 2016, explicitly spelled out the relevance of sustainability in public procurement, but lacked measurable requirements to inform practice.” Tshwane attempted to bridge the gap with the adoption of Tshwane’s Sustainable Procurement Strategy.

The March 2017 SPS for Tshwane came along with a three-year action plan, contained in Annexure D.⁵⁸ The earliest item in that plan is dated as third quarter of 2016/2017. By 2019, Tshwane had agreed to lead the Global Lead Cities Network on Sustainable Procurement for three years (a network in which Cape Town is also a member).⁵⁹

⁵⁰ Gauteng Provincial Treasury, “Gauteng Provincial Government Supply Chain Management Model Policy 2017-2018.”

⁵¹ Gauteng Provincial Treasury.

⁵² Adelaide Owusu Agyepong and Godwell Nhamo, “Green Procurement in South Africa: Perspectives on Legislative Provisions in Metropolitan Municipalities,” *Environment, Development and Sustainability* 19, no. 6 (December 1, 2017): 2466, <https://doi.org/10.1007/s10668-016-9865-9>.

⁵³ Agyepong and Nhamo, 2466.

⁵⁴ City of Tshwane, “Sustainable Procurement Strategy.”

⁵⁵ Global Lead Cities Network on Sustainable Procurement, “Tshwane Sustainable Procurement Profile,” 2021, https://glcn-on-sp.org/fileadmin/user_upload/Tshwane/Tshwane__GLCN_city_profile_-_2021.pdf.

⁵⁶ Agyepong and Nhamo, “Green Procurement in South Africa,” 2467.

⁵⁷ Global Lead Cities Network on Sustainable Procurement, “Tshwane Sustainable Procurement Profile.”

⁵⁸ City of Tshwane, “Sustainable Procurement Strategy.”

⁵⁹ Department of Environmental Affairs and Development Planning (DEADP), “SmartProcurement Programme Sustainable Procurement Analysis Report” (Department of Environmental Affairs and Development Planning, January 31, 2019), 13,

Tshwane's Sustainability Unit next led the development of the City's 2021 Climate Action Plan with funding from inter alia GIZ. This Plan states that "[t]he City will also establish supporting working groups, such as the sustainable procurement team which will comprise legal, finance and procurement professionals. Its role will be to provide advisory services to each of the outcome groups in respect of how to incorporate sustainability into the development of bid specifications."⁶⁰ While it remains committed to the sustainable procurement concept, the 2021 Plan appears to indicate that the Strategy had fallen into some disuse, as it states: "[t]he City will revive the SPP Strategy and implement a supplier development programme, which will ensure that the strategy is institutionalised."⁶¹ While further detailed case study research would be necessary to resolve the issue, the use of the term 'institutionalised' does not seem to have mandatory or legal force in this context.

2.6.2 Johannesburg

Johannesburg has a Climate Action Plan dated March 2021.⁶² One specific sub-action item listed is: "Amend the City's procurement policy to include a minimum energy performance level for rental buildings, appliances and equipment."⁶³ Another is: "Convert the municipal fleet to electric vehicles by 2040, and from 2030 ensure 100% of new vehicles procured by the City are EV."⁶⁴ Furthermore, the Plan indicates an intention to "Work with the Department of Economic Development to develop a Green Procurement Policy to stimulate climate change project implementation."⁶⁵

In terms of procurement policy, Johannesburg appears to have incorporated at least a mention of green procurement into its current SCM policy, dated 22 August 2019. This policy gives as one of its socio-economic objectives the following: "Promoting resource efficiency and reducing the negative environmental impact of the daily operations of the City, through taking a green approach to procurement."⁶⁶

2.6.3 Ekurhuleni

<https://www.westerncape.gov.za/eadp/files/atoms/files/DEADP%20SmartProcurement%20Analysis%20Report.pdf>.

⁶⁰ "City of Tshwane Climate Action Plan E-Version," 2021, 123,

<https://www.tshwane.gov.za/sites/Council/Office-Of-The-Executive-Mayor/Climate%20Action/Tshwane%20Climate%20Action%20Plan%20e-version.pdf>.

⁶¹ "City of Tshwane Climate Action Plan E-Version," 132.

⁶² "City of Johannesburg - Climate Action Plan (CAP).Pdf," accessed November 11, 2022, https://www.joburg.org.za/departments/_Documents/EISD/City%20of%20Johannesburg%20-%20Climate%20Action%20Plan%20%28CAP%29.pdf.

⁶³ "City of Johannesburg - Climate Action Plan," March 2021, 69, https://www.joburg.org.za/departments/_Documents/EISD/City%20of%20Johannesburg%20-%20Climate%20Action%20Plan%20%28CAP%29.pdf.

⁶⁴ "City of Johannesburg - Climate Action Plan," 74.

⁶⁵ "City of Johannesburg - Climate Action Plan," 129.

⁶⁶ "Supply Chain Management Policy (City of Johannesburg)," August 22, 2019, sec. 2.4.2, https://www.joburg.org.za/work/_Documents/2020%20Tenders%20and%20Quotations/June%202020/Final%20SCM%20Policy%20v5%2022%20August%202019.pdf.

Ekurhuleni last revised and adopted its SCM policy in 2017.⁶⁷ There is no specific reference to green procurement or sustainable procurement in this public procurement policy. There are four general references to sustainability, including noting that in section 2 of the Municipal Finance Management Act (MFMA), Act No 56 of 2003, the object of the Act is “to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards for, inter alia, supply chain management.”⁶⁸ Ekurhuleni does have a Green City Climate Action Plan (2022).⁶⁹ However, this Plan does not indicate an intention to develop any legal or policy instruments relating to sustainable public procurement.

2.6.4 Other Gauteng Municipalities

Sedibeng District Municipality has an up-to-date and publicly available SCM policy document.⁷⁰ It mentions environmental considerations only once or twice, for instance:

“Commitment to safety, health and the environment The SDM is committed to the health and safety of its personnel and its providers in the application of its SCM system. The SDM is committed to the preservation of the environment, minimised pollution and improved use of natural resources in the application of its SCM processes and more specifically in the design of the specifications/TORs for each requirement.”⁷¹

Similar are the SCM policies of the Mogale City Local Municipality⁷² and of the West Rand District Municipality (within which Mogale City is located).⁷³

It is interesting to ask whether and how SCM policy can contribute to ESG (environmental, social, and governance factors) and ESG targets/achievement. Some industry groups see the two are very closely associated.⁷⁴ Academic research, however, on the whole distinguishes between the private and the public sector in this dimension,

⁶⁷ “City of Ekurhuleni Supply Chain Management Policy,” accessed November 11, 2022, <https://www.ekurhuleni.gov.za/wp-content/uploads/2022/07/Annexure-D23-Supply-Chain-Management-Policy-.pdf>.

⁶⁸ “City of Ekurhuleni Supply Chain Management Policy,” sec. 6.1.2.1.

⁶⁹ “City of Ekurhuleni Green City Action Plan Summary Report,” May 20, 2022, <https://ekurhuleni.gov.za/wp-content/uploads/2022/05/CoE-GCAP-Summary-Report-E-Version-20-05-22.pdf>.

⁷⁰ “Supply Chain Management Policy and Procedures (2021-22) Sedibeng District Municipality,” 2021, [http://www.sedibeng.gov.za/a_keydocs/2021-2022%20MFMA/Budget%20related%20policies%202021-2022/15.%20Supply%20Chain%20Management%20Policy%20and%20Procedures%20%20-%20\(2021-22\).pdf](http://www.sedibeng.gov.za/a_keydocs/2021-2022%20MFMA/Budget%20related%20policies%202021-2022/15.%20Supply%20Chain%20Management%20Policy%20and%20Procedures%20%20-%20(2021-22).pdf).

⁷¹ “Supply Chain Management Policy and Procedures (2021-22) Sedibeng District Municipality,” sec. 1.12.

⁷² “Supply Chain Management Policy Mogale City Local Municipality (2022),” May 31, 2022, <https://www.mogalecity.gov.za/wp-content/uploads/Pdfs/Council%20Page/Key%20Documents/Policies/2022%20-%202023/Supply%20Chain%20Management%20Policy.pdf?t=1656427360>.

⁷³ “SCM Policy West Rand District Municipality,” 2021 2020, <http://www.wrdm.gov.za/wp-content/uploads/2020/03/04-SCM-Policy.pdf>.

⁷⁴ “Procurement Body SPP Driving ESG Change,” January 22, 2022, <https://supplychaindigital.com/procurement/procurement-body-spp-driving-esg-change>.

investigating for instance the degree to which green public procurement policies influence private ESG standards.⁷⁵

3.0 Green/Sustainable Public Procurement Research Design

This section discusses the research design of the two leading studies of green/sustainable public procurement – an academic study from 2013 and the Western Cape applied research of several years later. A separate document includes a draft research instrument (a semi-structured interview questionnaire).

The academic 2013 study done by Agyepong and Nhلامo looked at all 8 South African metropolitan municipalities and their adoption of green procurement. Document analysis and interviews were the main research methods. 51 documents were collected for analysis which was done by keyword search. These documents fell into two categories: those that had a specifically green subject matter and those that did not but might still be relevant as they contain a development vision. Specifically green documents included green procurement guidelines and green procurement implementation strategies. Non-specific documents included integrated development plans, environmental policies (including integrated waste management policies, and energy and climate change policies), and supply chain management policies.⁷⁶ These covered the development visions and related practices of the public bodies. 30 interviews were additionally conducted as part of this study, including with four officials from the Johannesburg municipality.

As indicated above, the Agyepong and Nhلامo study distinguished between policies that recognized green procurement to some extent and two distinct categories of policy instruments: supply chain management policies that specifically incorporate elements of green procurement (e.g. procurement policies mainstreaming green procurement) and stand-alone green procurement strategic policies. The 2013 research counted eThekwin in the first category, even though its SCM policy merely had a separate section on green procurement, a section which effectively expressed a strategy on green procurement, a strategy which was (as of 2013) unimplemented.⁷⁷ Thus EtheKwini really should have been counted in the category of a stand-alone strategy (in the sense of a green procurement strategy distinct from general environmental policies) like Nelson Mandela Bay and, from 2017, Tshwane.

According to this study, in 2012, Cape Town developed and implemented a guideline as an annexure to its SCM policy. Municipalities are required to develop these SCM policies in terms of section 56 of the MFMA. The 2012 guideline addressed itself to two aspects of procurement: to the aspect of acquisition management and to the aspect of disposal and risk management. Generic criteria were specified to be considered in acquisition. These generic criteria included environmentally certified suppliers. In disposal and risk management, incentives were promoted for suppliers engaging in environmentally responsible disposal of goods. In the 2013 research, Cape Town SCM officials “insisted” that

⁷⁵ Nickolay Gantchev, Jim Goldman, and Shu Zhang, “The Role of G(Overnment) in Corporate ESG Policies,” SSRN Scholarly Paper (Rochester, NY, November 18, 2022), <https://doi.org/10.2139/ssrn.4280531>.

⁷⁶ Agyepong and Nhلامo, “Green Procurement in South Africa.”

⁷⁷ Agyepong and Nhلامo, 2469.

they were not responsible for the green specifications (e.g. in tenders for acquisition) and that such specifications needed to come from the specific departments working on the tenders.⁷⁸

In 2014, Nelson Mandela Bay approved its stand-alone strategy, which added green procurement into the municipality's environmental and SCM policies. The amendments to the SCM were to add in generic environmental criteria and supplier certifications. As of 2011/2013, the strategy was to be phased in over 3 years.⁷⁹

The other fairly extensive study assessing the degree of green procurement practiced at local government level in South Africa was conducted by the Western Cape. In 2016, municipalities in the Western Cape were the subject of a Green Procurement Status Report.⁸⁰ The research followed a scorecard methodology. The research for this report was conducted by the provincial department of human settlements although the original appears not to be publicly available (at least yet). [In this view, "the lack of implementation of green procurement and SPP is attributed to limited skills, knowledge, and accessible tools to make use of, along with an increasingly punitive governance environment spurred by the overly high priority given to the Auditor General's Reports, which inhibits innovation and willingness to deviate from business as usual."⁸¹]

The review criteria and grading system for the 2016 Green Procurement Status Report is available in a later 2019 publication of the Western Cape.⁸² This research focused on procurement policy but on the whole used green procurement rather than sustainable procurement as its dependent variable. The research constructed a 20-point scale for implementation and usefully distinguished between levels of formal policy, informal understanding, actual implementation, and future planning. The method was likely interviews.

⁷⁸ Agyepong and Nhamo, 2469.

⁷⁹ Agyepong and Nhamo, 2470.

⁸⁰ Department of Environmental Affairs and Development Planning (DEADP), "SmartProcurement Programme Sustainable Procurement Analysis Report," 23–25.

⁸¹ Department of Environmental Affairs and Development Planning (DEADP), 23.

⁸² Department of Environmental Affairs and Development Planning (DEADP), 24–25.