

This document covers some relevant and significant aspects of the literature on the policy and practice of sustainable public procurement in two separate sections: first generally and secondly specifically in South Africa.

1.0 General Literature Review: Sustainable Public Procurement

There is an urgency to work towards decoupling from a carbon-based economy in order to lead to a future with sustainable outcomes. In response to this need, public sector actors have turned to focus on the activity of sustainable public procurement. Government due to its size and geographical spread has a lot of purchasing power in all sectors of the economy. Through changing its existing methodology and procedures for procurement and its vast purchasing power, it is thus able to influence and impact upon the manufacturing and production of good and services, while also boosting innovation. By specifying particular characteristics of these goods and services and by exploiting regulatory space to determine its procurement procedures and policies and engage in strategic procurement, it can choose to have a significant positive influence on the environment to meet sustainability goals especially from high impact sectors such as buildings, food and catering, transport and energy-using products.

In addition to its purchasing power, sustainable public procurement has significant innovation capacity. As the Organisation for Economic Co-operation and Development (OECD) has pointed out, “[b]eyond bringing existing low-carbon solutions to market today, [public procurement] can create ‘lead’ markets, for instance where government demand is significant (e.g. transport, construction). Like other demand-side innovation tools (regulations and standards), procurement can spur innovation without engaging new spending – a plus in times of fiscal consolidation.”¹

Within the field of public procurement, the concept of sustainable procurement is often understood as the environmentally-focused meaning of “green procurement”. More recently, the most accepted meaning of sustainable public procurement is usually sourced via the United Nations Environmental Programme (UNEP) to a more holistic meaning, a public procurement policy that integrates three distinct components: the environmental but also a social component and an economic one. The social one is usually understood as economic empowerment of excluded persons (which in South Africa includes broad-based black economic empowerment (BBBEE)) and the economic one is understood as financial sustainability (achieving value-for-money, reducing barriers to entry for small medium and micro enterprises (SMMEs), and promoting stable markets for goods, services, and infrastructures).

¹ Baron, “The Role of Public Procurement in Low-Carbon Innovation” (OECD, April 2016), <https://www.oecd.org/sd-roundtable/papersandpublications/The%20Role%20of%20Public%20Procurement%20in%20Low-carbon%20Innovation.pdf>.

In 2019/2020 the major multinational development finance banks have developed and approved policies on sustainable public procurement. A number have put out extensive guidance notes including the World Bank² and the African Development Bank³. These policies do not mandate sustainable procurement policies be used (at least not beyond what might be mandatory in terms of other policies of the Banks in the environmental and social areas) but rather appear to be aimed at raising awareness and soft compliance (e.g. as a resource by those motivated and permitted but not compelled to comply with sustainable procurement).

The World Bank has recently published a useful overview of efforts to introduce sustainable/green procurement into different country systems, distinguishing between efforts to do so in advanced and in emerging economies. This report distinguishes among three types of regulatory approaches to operationalize green procurement: environmental criteria, environment standards such as ecolabels, and total cost of ownership accounting practices.⁴

These three categories can be adopted in this literature review in order to think about degrees of intervention and modification into the existing procurement practices.

1.1 Environmental Criteria

In some sense, the first category (environmental criteria) does not constitute a significant modification at all. It identifies factors that are relevant to the decision to procure and simply aims to ensure that these relevant factors are in fact taken into account in the procurement process. This (lightest touch) regulatory approach to sustainable public procurement is the one that has been adopted in the accompanying documents on draft SPP guidelines.

1.2 Environmental Standards

The second – environmental standards -- is a slightly harder regulatory tool. Identifying an ecolabel or sustainability standard is to some extent a form of eligibility as it depends upon a rule (even if in some circumstances a voluntary one. – for instance Tshwane used ISO 20400 in developing its 2017 Sustainable Procurement Strategy.⁵). This is why, for instance, the World Bank is careful to advise that the phrase “or equivalent” be put into the

² “Procurement Guidance Note: Sustainable Procurement An Introduction for Practitioners to Sustainable Procurement in World Bank IPF Projects,” April 2019, <https://thedocs.worldbank.org/en/doc/788731479395390605-0290022019/original/GuidanceonSustainableProcurement.pdf>.

³ African Development Bank, “Sustainable Public Procurement,” December 2020, https://www.afdb.org/sites/default/files/2020/12/18/guidance_note_-_sustainable_public_procurement.pdf.

⁴ World Bank, *Green Public Procurement: An Overview of Green Reforms in Country Procurement Systems* (World Bank, 2021), <https://doi.org/10.1596/36508>.

⁵ City of Tshwane, “Sustainable Procurement Strategy,” March 2017, 5, <https://www.tshwane.gov.za/sites/Council/Ofiice-Of-The-Executive-Mayor/Climate%20Action/006-Sustainable-Procurement-Strategy.pdf>.

requirement of certification for supplier or for an ecolabel in tender specification in order not to restrict market competition.⁶

Some recent regulatory research has investigated the effectiveness of voluntary sustainability standards. This research argues that rigid sustainability standards, oriented toward compliance, are effective for addressing issues that are transparent or enshrouded by behavioral opacity, but are counterproductive for issues with systemic opacity.⁷ This argument can be applied to the South African public procurement system, which is arguably characterized by systemic opacity. The implication of the argument is that moderately rigid or flexible sustainability standards would be better than rigid ones within the procurement context.

Of course voluntary standards may be turned into mandatory ones with the power of the state. For instance, Germany has recently passed and brought into force domestic legislation that requires private companies employing more than 1000 individuals in Germany to exercise due diligence regarding human rights and environmental risks within their supply chains. In addition to imposing this duty to look throughout their supply chains, the public procurement process is employed as part of the remedial scheme of the German Act. As Uribe Teran points out “In case of non-compliance with the provisions of the Act, the companies covered by the law could be excluded from the award of public contracts under public procurement processes or receive an administrative fine up to two percent (2%) of their average global turnover.”⁸ One prohibition contained in this act is against excessive water consumption by a water user within the relevant supply chain. There is no proposal currently on the agenda in South Africa to adopt legislation such as the German Due Diligence Act.⁹ In consultation with Provincial Treasury, it is possible to propose that specific standards become mandatory within the Gauteng public procurement system.

1.3 Total Cost of Ownership & Green Infrastructure

The third type of regulatory approach for implementing sustainable public procurement -- total cost of ownership accounting/costing practice -- argues for substantive economic regulatory rationality – that taking into account a broad and proper range of factors, it is most rational to engage in green procurement. This costing method should, says the World Bank, be used only for extensive projects – often such as the construction of public infrastructure plants such as wastewater treatment plants – but nonetheless can be modified to align with the at-times limited technical capacity of emerging economies.¹⁰

⁶ Note that the Competition Commission may be investigating the effects of sustainability on competition and in particular the prospects for pre-approving some degree of horizontal collaboration in the service of sustainability and competitiveness.

⁷ Frank Wijen and Mallory Elise Flowers, “Issue Opacity and Sustainability Standard Effectiveness,” *Regulation & Governance* n/a, no. n/a, accessed September 28, 2022, <https://doi.org/10.1111/rego.12485>.

⁸ Daniel Uribe Teran, “Beyond Corporate Social Responsibility: Strengthening Human Rights Due Diligence through the Legally Binding Instrument on Business and Human Rights,” SSRN Scholarly Paper (Rochester, NY, October 1, 2021), <https://doi.org/10.2139/ssrn.4083020>.

⁹ It may well lie beyond the scope of this project to investigate the content and adoption of such legislation. However, the regulatory mechanism of the German law used to identify environmental risks within the supply chain would be of interest.

¹⁰ World Bank, *Green Public Procurement*.

While it is conceptually distinct, this regulatory approach appears closely related in practice and politics with the Green Infrastructure movement. The Green Infrastructure movement recognizes that infrastructure policies are central to the implementation of a successful green growth strategy and thus offers a vision of providing cost-effective and efficient infrastructure while meeting green growth objectives.¹¹ As explored more fully in the accompanying Gauteng Preliminary Status Quo Analysis Report, this vision of green infrastructure appears to have strongly influenced Gauteng strategic plans over the past decade or so, including but not limited to the construction sector.

It is as yet unclear what degree of influence – what legs – the Green Infrastructure concept has, especially (in an important question for this project) as compared with the concept of green/sustainable public procurement. GCRO research on the GI concept within local municipalities in Gauteng around 2015 indicated some potentially strong internal limitations (e.g. bureaucratic) to the adoption and influence of the GI concept. For instance, one finding of this research was that “... limited municipal budgets earmarked for public utility maintenance are considered as a significant barrier for investing in GI by municipalities and departments.” And potentially even more significantly, the research found that “the GI approach needs to be framed in such a way as to engage officials from a range of departments so that each can see the value in terms of their mandates and responsibilities.”¹² Starting as it does firmly in the public financial management space, the concept of green/sustainable public procurement would not seem to face this same internal limitation. In that sense, sustainable public procurement may have longer “policy legs” than green infrastructure in promoting the objectives of the green growth economy in Gauteng.

An important question is the place and fit of SMMEs in sustainable procurement.¹³ As the terms of reference for this project put it: “The [policy] process should take an ecosystem approach to identify and address market blockages that prevent “green” SMMEs from participation in the market so as to ensure that they get a share of capital that is mobilised for the Green Economy. This will allow them to compete on a more equitable basis to provide goods and services for a green economy.”

2.0 Literature Review: Sustainable Public Procurement in South Africa

The South African government is taking a number of measures to combat global warming including mitigation and adaptation measures. For example, the new carbon tax is an environmental tax on the carbon dioxide (CO₂) equivalent of greenhouse gas emissions imposed in terms of the Carbon Tax Act No 15 of 2019 and Customs and Excise Act No 91 of 1964. South Africa’s carbon tax regime is in the process of phasing into effect. In response to climate change, the carbon tax is a mitigation measure. Sustainable public procurement

¹¹ K. Bobbins and C. Culwick, “Green Growth Transitions through a Green Infrastructure Approach at the Local Government Level : Case Study for the Gauteng City-Region,” *Journal of Public Administration* 50, no. 1 (March 2015): 32–49, <https://doi.org/10.10520/EJC175618>.

¹² Bobbins and Culwick.

¹³ Stephen Brammer and Helen Walker, “Sustainable Procurement in the Public Sector: An International Comparative Study,” *International Journal of Operations & Production Management* 31, no. 4 (March 22, 2011): 452–76, <https://doi.org/10.1108/01443571111119551>.

can lead innovation towards a low-carbon economy and is considered an important and significant economic adaptation measure.¹⁴

2.1 The Public Procurement System

A review of the South African literature on sustainable public procurement ought to begin within the field of public procurement in South Africa more generally. It is widely recognized that the South African public procurement system faces several challenges and has been strongly criticized at a system level.¹⁵ The system is the product of an as-yet-incomplete process of reform that began with South Africa's transition to constitutional democracy.¹⁶

Most prominent in the immediate post-apartheid reforms was the quick introduction of a social issue – black economic empowerment – as a key objective of public procurement, with a constitutionally mandated statute (the Preferential Procurement Policy Framework Act (PPPFA)) largely focusing in its core provisions on this objective, as opposed to the dimensions of economic value and of environmental policy.¹⁷

One significant dimension on which the system is in failure is that of fragmentation – as identified in a key 2014 report commissioned by National Treasury's Office of the Chief Procurement Officer (OCPO) -- with numerous statutes and institutions involved in the "regulation" of public procurement.¹⁸ The position of the OCPO itself within Treasury is itself highly contested, with many calling for its move to a statutory body independent of government.¹⁹ A legislative process is currently underway – the drafting of the Public Procurement Bill – intended to lead to the enactment of a comprehensive public procurement statute.

While it is feasible to incorporate principles of green and sustainable public procurement into this legislation, the successful development of such public procurement in South Africa has been bottom-up (e.g. at local and provincial levels) rather than top-down. Continued movement can be facilitated within for instance specific provincial departments by having the political head or at least the chief financial officer or budget officer as institutional political champion.

¹⁴ Baron, "The Role of Public Procurement in Low-Carbon Innovation."

¹⁵ David Fourie and Cornel Malan, "Public Procurement in the South African Economy: Addressing the Systemic Issues," *Sustainability* 12, no. 20 (January 2020): 8692, <https://doi.org/10.3390/su12208692>.

¹⁶ Ryan Brunette, Jonathan Klaaren, and Patronella Nqaba, "Reform in the Contract State: Embedded Directions in Public Procurement Regulation in South Africa," *Development Southern Africa* 36, no. 4 (July 4, 2019): 537–54, <https://doi.org/10.1080/0376835X.2019.1599712>.

¹⁷ Lerato Shai, Comfort Molefinyana, and Geo Quinot, "Public Procurement in the Context of Broad-Based Black Economic Empowerment (BBBEE) in South Africa—Lessons Learned for Sustainable Public Procurement," *Sustainability* 11, no. 24 (January 2019): 7164, <https://doi.org/10.3390/su11247164>.

¹⁸ Geo Quinot, "An Institutional Legal Structure for Regulating Public Procurement in South Africa," March 2014, <http://africanprocurementlaw.org/wp-content/uploads/2016/01/OCPO-Final-Report-APPRRU-Web-Secure.pdf>.

¹⁹ Sakhile Manyathi, Johan Burger, and Len Mortimer, "The Role of the Public Procurement Regulator in Service Delivery Improvement in South Africa," *Journal of Public Administration* 56, no. 4 (December 2021): 823–41.

2.2 Sustainable Public Procurement in South Africa

The literature on sustainable public procurement in South Africa is small but growing.²⁰ The argument has been made that SA is well placed to advance quickly in the field of sustainable procurement. A 2014 report by the International Institute for Sustainable Development (IISD) in a process assisted by the Department of Trade and Industry (DTI) that found that “the policy space for the implementation of SPP was ... prevalent across the many legal instruments that promote environmental stewardship, social cohesion and industrial development.”²¹ The report found that “municipalities, provinces and the private sector have been taking initiative and building their awareness and expertise in SPP and moving ahead with their own initiatives, albeit with varying degrees of success”. In its conclusion, the report looked to the National Treasury to become an institutional champion for sustainable procurement.

There is little evidence to show that the Office of the Chief Procurement Officer in the National Treasury has taken up a role as champion of sustainable public procurement. For instance, South Africa has not taken action to set up a focal point to report on SDG 12 (see above) and to provide evidence towards the indicator regarding sustainable public procurement in terms of SDG 12.7.²² This is despite the placement of sustainable public procurement within the SDGs. Sustainable Development Goal 12 of Agenda 2030 advocates “Responsible Consumption and Production” with target 12.7 stating the need of “promoting public procurement practices that are sustainable”. Furthermore, Sustainable Development Goal 13 calls for urgent action “to combat climate change and its impacts”. The indicator for the promotion of sustainable public procurement counts “the number of countries with relevant policies and action plans, but do[es] not evaluate actual progress made in these areas. ... [A] proposal to instead measure the share of sustainable public procurement in total public procurement was rejected.”²³

Nonetheless, some positive movement in South Africa towards the sustainable public procurement objective has occurred in specific sectors and at sub-national levels. On the whole, as the accompanying Gauteng Preliminary Status Quo Analysis Report demonstrates, this policy movement appears to have occurred in ebbs and flows, thus with significant variability.

At national level, much of the progress has been in specific sectors. Thus, the Department of Transport has begun to develop a green procurement guideline for its vehicle fleet.²⁴ This draft guideline conceives green procurement through the life-cycle approach to costing as a sub-set of value for money procurement. The draft guideline

²⁰ Ogunlela Oyebanjo and Tengeh Robertson, *Proceedings of the 6th International Conference on Business and Management Dynamics*, ed. Michael Twum-Darko (Book Publisher International (a part of SCIENCEDOMAIN International), 2021), <https://doi.org/10.9734/bpi/mono/978-93-90516-46-9>.

²¹ Laura Turley, “Implementing Sustainable Public Procurement in South Africa: Where to Start,” 2014, https://www.iisd.org/system/files/publications/implementing_spp_south_africa.pdf.

²² “2020/2021 Data Collection for SDG Indicator 12.7.1: Main Results and Conclusions from the First Reporting Exercise” (UNEP, January 2022), <https://wedocs.unep.org/bitstream/handle/20.500.11822/37967/SDG.pdf>.

²³ Des Gasper, Amod Shah, and Sunil Tankha, “The Framing of Sustainable Consumption and Production in SDG 12,” *Global Policy* 10, no. S1 (2019): 83–95, <https://doi.org/10.1111/1758-5899.12592>.

²⁴ “Guideline for Procurement of Green Vehicles in the Public Sector (Draft: 26-10-2021),” October 26, 2021.

recommends that green vehicle procurement be done either through an extant national transversal contract or through competitive bids via the supply chain management process. Nonetheless, this literature review does not purport to comprehensively survey the national level.

The accompanying Gauteng Preliminary Status Quo Report notes – particularly in certain sectors -- where provincial and relevant national policies overlap or interact. It also details relevant literature on the experience of preferential procurement within Gauteng province. The remainder of this literature review details movement towards sustainable public procurement that has occurred at provincial level other than in Gauteng (e.g. in the Western Cape) and at local level in Gauteng.

2.3 *Sustainable Public Procurement in the Western Cape*

At provincial level, the Western Cape Government has made some strides in developing policies for sustainable economic growth including sustainable job creation, which are aligned to green procurement policies including a project to incorporate green procurement in state-subsidised human settlements. Some of this policy development experience was consolidated and reflected upon in two Western Cape reports of 31 January 2019²⁵ and 31 July 2019.²⁶ The policy programme was also discussed in the Green Economy Indicator Report of 2019.²⁷

The WC policy process has been an explicitly reflective one. As the 2019 Report mentions, a key take-away from research on several case studies was that "in these three municipal case Studies, there were no deviations from standard procurement processes, however, functionality scoring was designed to meet specific sustainability criteria."²⁸

In line with this research finding that deviations were not in fact used in the infrastructure procurement case studies investigated but that functionality scoring was adjusted, the Western Cape began in 2019 to develop a training manual for procurement officers in local government which "adopts the [notion] that SPP in infrastructure and construction cannot take the same approach as the SPP of products, as no standard specifications can be produced for the range of asset classes." In lieu of national legislative change, the Western Cape was thus pursuing a change management process to implement

²⁵ Department of Environmental Affairs and Development Planning (DEADP), "SmartProcurement Programme Sustainable Procurement Analysis Report" (Department of Environmental Affairs and Development Planning, January 31, 2019), <https://www.westerncape.gov.za/eadp/files/atoms/files/DEADP%20SmartProcurement%20Analysis%20Report.pdf>.

²⁶ SmartProcurement Programme, "Case Studies of Sustainable Public Procurement Implementation in the Western Cape," July 31, 2019, https://www.westerncape.gov.za/eadp/files/atoms/files/WCG%20SPP_Case%20Studies_FINAL_20190731.pdf.

²⁷ Western Cape, "Green Economy Indicator Report 2019" (Department of Environmental Affairs and Development Planning, 2018).

²⁸ Western Cape, 15.

SPP in local government in that province. The training manual was published in November 2021.²⁹

2.4 Sustainable Public Procurement in Gauteng at Local Level

There is also research for the municipal level of sustainable procurement. Some aspects of this literature are presented in the accompanying Gauteng Preliminary Status Quo Report.

Research conducted in 2013 and reported in a journal article by Agyepong and Nhamo usefully studied the adoption of green procurement in South Africa's 8 metropolitan municipalities. This study found that while all such local government entities had policies adopting and recognizing the concept to some extent, only two (Cape Town and eThekweni) had incorporated green procurement policies into their supply chain management policies and only two (Cape Town and Nelson Mandela Bay) had a stand-alone green procurement strategy.³⁰ Regarding the latter finding, this study was conducted in 2013 prior to the finalization of Tshwane's stand-alone green procurement guideline.³¹ The research design of this study used document analysis and interviews and is discussed in further depth below.

At municipal level, there is some evidence that policy makers distinguish between legislation and implementation guidelines. The feeling is that legislation indicates that the subject matter – in this case green procurement – is to be taken more seriously.³² One specific implication is that national legislation ought to be formulated in such a way as to provide leadership on the issue of sustainable procurement.

However, the currently leading South African research, while deepening the analysis, comes to more or less the same policy prescription as did the leading 2014 report – that there is potential for greater adoption of, in particular, the green public procurement element as part of a move towards greater sustainable public procurement in South Africa.

Stoffel, Cravero, La Chimia, and Quinot (2019) examined SPP in terms of three dimensions and conducted comparative research between the EU and sub-Saharan Africa. They persuasively argued that South Africa's public procurement has been tilted towards the social component while EU public procurement has been tilted towards the environmental component of sustainable public procurement.³³ This comparative research into sustainable public procurement practices argued instead for a balanced and holistic

²⁹ "Sustainable Public Procurement Training and Implementation Manual: Implementing Total Cost of Ownership in the Procurement of Infrastructure and Asset Management," November 2021, https://www.westerncape.gov.za/eadp/files/atoms/files/WCG%20Sustainable%20Public%20Procurement%20-%20Training%20and%20Implementation%20Manual_HOD%2026112021%20%28003%29.pdf.

³⁰ 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): 2457–74, <https://doi.org/10.1007/s10668-016-9865-9>.

³¹ Agyepong and Nhamo, 2466.

³² 2465.

³³ Tim Stoffel et al., "Multidimensionality of Sustainable Public Procurement (SPP)—Exploring Concepts and Effects in Sub-Saharan Africa and Europe," *Sustainability* 11, no. 22 (January 2019): 6352, <https://doi.org/10.3390/su11226352>.

sustainable procurement policy, integrating these environmental, social, and economic dimensions. Both the EU and South Africa would thus need to adjust their policies and practices – but in different dimensions. [Was it this article that identified the Namibian law of public procurement as a counterexample?] A related study examined the impact of BEE in South Africa in the context of sustainable public procurement and concluded that there is a knowledge gap regarding the impact of BEE.³⁴

³⁴ Shai, Molefinyana, and Quinot, “Public Procurement in the Context of Broad-Based Black Economic Empowerment (BBBEE) in South Africa—Lessons Learned for Sustainable Public Procurement.”