Songezo Mabece, RSA

Competition Aspects of Public Procurement
(The South Afrikan Perspective)
STRUCTURE OF PRESENTATION

Understanding Procurement and Competition Law

Historical Overview of:

RSA Constitution;

Public Procurement Law; and

Competition Law

Public Interest Characteristics of Public Procurement and Competition Law

Competition Concerns in Procurement

The Road Ahead

Questions
UNDERSTANDING COMPETITION AND PROCUREMENT

- (Public) Procurement in Action
- Competition in Action
- Difference and/or Similarities?
HISTORICAL ROOTS

- Constitutional of RSA:

- Public Procurement:

- Competition Law:
HISTORICAL OVERVIEW: THE CONSTITUTION

Apartheid
Codesa & MPNF
Interim Constitution
Final Constitution (Bill of Rights)
Socio-Economic Rights Programmes (& Legislation)
  • RDP (1995) and GEAR (1996)
HISTORICAL OVERVIEW: PUBLIC PROCUREMENT LAW

- Green Paper
- Promotion of Administrative Justice Act (PAJA)
- Construction Industry Development Board (CIDB)
- Public Finance Management Act (PFMA)
- Preferential Procurement Policy Framework Act (PPPFA)
- Municipal Finance Management Act (MFMA)
- Municipal Finance Management Act (MFMA)
- Broad-Based Black Economic Empowerment Act (BBBEE)
HISTORICAL OVERVIEW: COMPETITION LAW

1948
- State Control (through Parliamentary Sovereignty) Apartheid

1955
- Regulation of Monopolistic Conditions Act

1978
- Mouton Commission
- Maintenance and Promotion of Competition Act

1979
- Competition Act

1998
- Competition Act
PUBLIC INTEREST CHARACTERISTICS

- Public Procurement Law and Competition Law Public Interest

  - Black
  - Women
  - Youth
  - Person’s with Disabilities
COMPETITION ISSUES IN PUBLIC PROCUREMENT

- Collusive tendering/bid rigging (including cover quoting,
  - losers’ fee, bid suppression/rotation)
- Market allocation
- Cross directorships and cross shareholding
- Collusive conduct by spouses or family members
- Economic interest groupings and joint ventures
- Excessive pricing
- Predatory pricing
- Exclusionary bid specifications
- Exclusionary contracting models such as transversal contracts
THE ROAD AHEAD

- Government Policy Must be Clear
- Independence of Institutions is Vital
- Coordination and Collaboration
- AfCFTA: Engage Early and Participate Meaningfully
ENKOSI KAKHULU

- tralac
- Competition Commission of South Afrika
- Stellenbosch University
- George Washington University
- The People of Kenya
- Sarova Hotel, Nairobi
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